



**NEW YORK STATE DEPARTMENT OF TRANSPORTATION  
REQUEST FOR PROPOSALS  
JOB ORDER CONTRACTING (JOC) SYSTEM SERVICES FOR NYSDOT  
Contract #C038061**

Initial Information for Submittal

- A. Please note the following **Dates and Deadlines**:
- a. **March 14, 2022:** RFP Release Date
  - b. **March 21, 2022:** Deadline for questions about the RFP at 12:00 PM (EST)
  - c. **March 28, 2022:** Questions/Answers about the RFP released by COB
  - d. **April 18, 2022:** Deadline for the submission of proposals at 12:00 PM (EST)
  - e. **End of April 2022:** Evaluations
  - f. **Mid-May 2022:** Technical Interviews
  - g. **June 2022:** Approximate Recommendation & Designation
  - h. **July 2022:** Contract Finalizing
  - i. **October 2022:** Contract Award
- B. Complete Proposals are to be submitted to the Designated Contact stipulated in Section 1.4.



NEW YORK STATE DEPARTMENT OF TRANSPORTATION  
RFP RESPONSE FORM

**Contract No. C038061 – Job Order Contracting (JOC) System Services for NYSDOT**

Please review this RFP, complete the following information, and email to the NYSDOT Designated Contact at the email address below, by the earliest date practical.

\_\_\_ We **DO** intend to submit a Proposal

\_\_\_ We **DO NOT** intend to submit a Proposal for the following reasons:

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Proposer Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Typed Name and Title: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email Address: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Please email the completed form to [Shalina.Mallory@dot.ny.gov](mailto:Shalina.Mallory@dot.ny.gov).

**NEW YORK STATE DEPARTMENT OF TRANSPORTATION  
REQUEST FOR PROPOSALS  
JOB ORDER CONTRACTING (JOC) SYSTEM SERVICES FOR NYSDOT  
Contract No. C038061**

**CONSULTANT TECHNICAL AND MANAGEMENT PROPOSAL/SUBMITTAL  
SUBMISSION CHECKLIST**

**Part I – Technical and Management Proposal/Submittal**

<input type="checkbox"/>	#1 Electronic Copy of Part I – Technical and Management Proposal/Submittal in Adobe PDF Format submitted via email to the RFP's Designated Contact
<input type="checkbox"/>	Signed Cover Letter on official business letterhead
<input type="checkbox"/>	Table of Contents identifying each major section and page numbers
<input type="checkbox"/>	Narrative Description
<input type="checkbox"/>	Approach, Scope of Services and Schedule
<input type="checkbox"/>	Organization and Staffing
<input type="checkbox"/>	Experience
<input type="checkbox"/>	Sample Unit Price Book (UPB)
<input type="checkbox"/>	Complete and Submit Attachment #15: Key Personnel Reference Form

**NEW YORK STATE DEPARTMENT OF TRANSPORTATION  
REQUEST FOR PROPOSALS  
JOB ORDER CONTRACTING (JOC) SYSTEM SERVICES FOR NYSDOT  
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**CONSULTANT COST AND ADMINISTRATIVE PROPOSAL/SUBMITTAL  
SUBMISSION CHECKLIST**

**Part II – Cost and Administrative Proposal/Submittal**

<input type="checkbox"/>	#1 Electronic Copy of Part II– Cost and Administrative Proposal/Submittal in Adobe PDF Format submitted via email to the RFP’s Designated Contact
<input type="checkbox"/>	Required Cost Proposal – Attachment #18
<input type="checkbox"/>	Complete and submit online certification or hard copy of Vendor Responsibility Questionnaire nm
<input type="checkbox"/>	Complete and submit Attachment #2: Consultant Information and Certification Form
<input type="checkbox"/>	Complete and submit Attachment #3: Form AOR Acknowledgement of Receipt
<input type="checkbox"/>	Complete and submit Attachment #4: Procurement Lobbying Law Forms
<input type="checkbox"/>	Complete and submit Attachment #6: Non-Collusive Bidding Certification
<input type="checkbox"/>	Complete and submit Attachment #7: Vendor Assurance of No Conflict of Interest or Detrimental Effect
<input type="checkbox"/>	Complete and submit Attachment #11: M/WBE/SDVOB Participation Information Form
<input type="checkbox"/>	Complete and submit Attachment #11a: M/WBE/SDVOB Subconsultant Participation Solicitation Log
<input type="checkbox"/>	Complete and submit Attachment #13: New York Business Reporting
<input type="checkbox"/>	Complete and submit Attachment #14: Diversity Practices Questionnaire

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**NEW YORK STATE DEPARTMENT OF TRANSPORTATION  
REQUEST FOR PROPOSALS  
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**1. Introduction**

**1.1 Purpose**

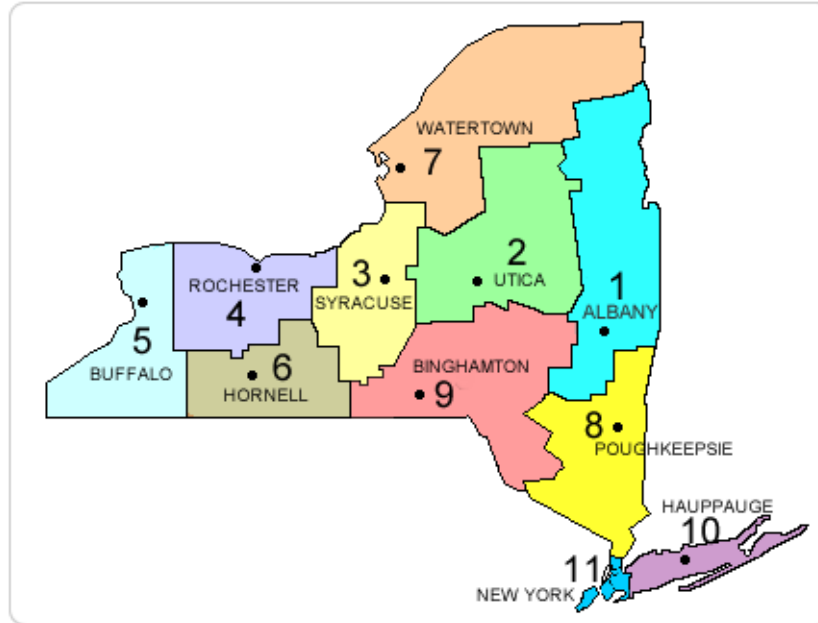
The New York Department of Transportation (NYSDOT) is seeking proposals from responsive, responsible, and qualified consultants to provide a Job Order Contracting (JOC) system, as well as a web-based management and information program. This includes providing support, training, and expertise for such a system, as well as the development of a Unit Price Book (UPB) of items associated with contractor for maintenance and repair of highway systems for individual contracts let by NYSDOT.

The JOC system will be used to enhance NYSDOT's efforts in maintaining the State's transportation infrastructure system. The main objective of the JOC system will be to enable NYSDOT to augment maintenance and repair-related activities done by State forces. Through the use of contracted services, by providing a flexible, indefinite quantity contract suitable for a wide variety of activities.

**1.2 Background**

NYSDOT is comprised of eleven Regions across New York State (see Figure 1 below). Each Region has a regional office as well as transportation maintenance facilities known as residencies and sub-residencies, totaling 257 maintenance facilities statewide. Due to the decrease in staffing levels in recent years, additional resources are necessary to continue maintaining the large and aging transportation system at an acceptable level of service, for the traveling public, in a timely manner. NYSDOT wishes to have these additional resources available on an as-needed basis to undertake the performance of cyclical, preventative, and unscheduled maintenance-related activities, along with numerous heavy highway construction related activities (hereinafter, "maintenance and repair").





**Figure 1 – NYSDOT Regions**

The structure of the requested JOC System services must allow NYSDOT maintenance managers the flexibility to utilize both state and contracted resources to perform any and all necessary maintenance activities. This requires that an indefinite quantity, non-specific work location/type contract (i.e., JOC Contract) be developed using defined work items and pre-set uniform pricing. For such JOCs and easy-to-use, very detailed, location-specific cost estimating and planning system promulgated with up-to-date work items and pricing information for all potential types of maintenance work and repair activities is required.

The JOC System is a procurement system that enables NYSDOT the ability to accomplish a large number of small maintenance and capital projects with a single, competitively bid contract. It eliminates the time and expense of completing the normal design-bid-construct cycle for each project. It allows NYSDOT to decrease project duration and cost, while increasing quality. A Job Order is publicly advertised, potential contractors submit their bids based on the items listed in the Unit Price Book (UPB), and the apparent low bidder is then selected for the job.

### 1.2.1 How Job Order Contracting Works (Current Environment)

#### 1.2.1.1 The Contract Documents

A Job Order Contract consists of three documents. The first is a Unit Price Book which contains a catalog of construction items and construction related tasks with corresponding pre-set unit prices, e.g., a square foot deck surface treatment, a lineal foot of rigid conduit, and a cubic yard of fill. The unit prices include the direct cost of labor, material and equipment in the local market at the retail level, as applicable. The unit prices for some tasks are adjusted by volume. The tasks

included in the Unit Price Book are designed for the type of work NYSDOT generally requires and other work items NYSDOT should expect to encounter.

The second document is a set of technical specification supplements, if applicable, arranged according to the standard divisions of the Construction Specification Index. The technical specifications reflect NYSDOT's standards with regard to the quality of workmanship and materials. The technical specifications set the standard qualifications for the work.

The third document contains contractual information and consists of the information for bidders, bid forms, and general conditions. This document is designed to be similar in structure and substance to NYSDOT's traditional bid package, except for the contract language and procedures that must be modified to reflect the uniqueness of the Job Order Contracting Process.

#### 1.2.1.2 Guidance to Intending Bidders

During the bidding process, NYSDOT is not able to inform the contractors of the exact projects that will be performed. No commitments can be made with regard to the specific construction tasks or the quantities to be ordered from the Unit Price Book. However, based on the items, in the Unit Price Book, Contractors are able to determine the type of projects that NYSDOT intends to accomplish with the Job Order Contract.

NYSDOT can specifically tell the contractor that the contract will have a definitive term, generally one year with three options to extend and that the value of the contract measured in terms of dollars of work ordered will be a range from a nominal amount such as \$50,000 to a maximum amount based on the NYSDOT's expected volume of work. The maximum amount of the contract for NYSDOT is typically \$1,000,000. The intending bidders are advised that NYSDOT is only obligated to award the minimum amount during the term of the contract.

It is general practice to conduct at least one pre-bid conference for Job Order Contracts. Pre-bid conferences provide contractors with an overview of Job Order Contracting and guidance and the mechanics of being a Job Order Contractor. Contractors are instructed how to analyze the Unit Price Book, how to calculate adjustment factors, what is involved in developing a price proposal, the personnel requirements to staff a job order contract, and how to be successful under this system of contracting.

#### 1.2.1.3 Contractor Selection Process

Based on the Unit Price Book, specifications, and general conditions, NYSDOT invites contractors to bid. Only two adjustment factors can be applied to the pre-set unit prices. The first adjustment factor is for work performed during normal working hours. The second is for work performed outside normal working hours. The adjustment factors must include the contractor's indirect

costs, such as overhead, profit, insurance and bonds. The same two adjustment factors apply to every task in the Unit Price Book. Depending upon a host of factors such as market conditions and expected volume of work, the adjustment factors could be less than or greater than one percent (1%). For example, a mark-up on the book of a 15% would be bid as an adjustment of 1.15. The contractor bidding the lowest adjustment factors is the lowest bidder. The contract is awarded to the lowest, responsible, responsive bidder.

#### 1.2.1.4 Job Order Contracting Development Process

When NYSDOT identifies a project to be performed, NYSDOT and the contractor will visit the site and jointly develop and review the scope of work. Using the JOC Web-based Management and Information Program, NYSDOT then prepares a scope of work document and send it to the contractor along with a request for the contractor to prepare a proposal for the project. The level of detail and design included in the scope of work is a function of the difficulty of the particular project. The contractor breaks the scope of work down into individual construction tasks (e.g., repair of concrete pier cap, clean deck, install new culvert pipe, reset coping stones) and prepares the pricing proposal using the unit price data contained in the Unit Price Book. The price to be paid for each task is the unit price, multiplied by the quantity, and multiplied by the appropriately competitively bid adjustment factor. The price to be paid for the total project is the sum of the price for the individual tasks. As part of the proposal, the contractor also develops a schedule, drawings, if required, a list of proposed subcontractors , and MBE/WBE compliance documents.

NYSDOT then reviews the proposal package and has the option to accept the proposal, request modifications, or cancel the project. If the proposal is accepted, a job order is issued for the project. Approval of a job order contract is done within the JOC System. Each job order is a lump sum contract. Although the price is arrived at using the unit prices, the resulting job order is issued for a lump sum. The contractor must complete the scope of work for the lump sum price without regard to the actual final quantities of the actual tasks required. A job order is not a unit price contract and will not be adjusted upon completion of the project.

Once the work begins, NYSDOT inspects the work, approves payments and closes out the job in accordance with the procedure it develops.

#### 1.2.1.5 Continuing Financial Incentive

The major advantage of the Job Order Contracting system is that the individual job orders give the contractor a continuing financial incentive to provide high quality work on schedule. The incentive exists because each job order only represents a small portion of the total dollar value of the contract. By meeting the owner's expectations for quality and time, the contractor will be awarded additional job orders. If, however, NYSDOT is not satisfied with the performance of the contractor, then future job orders may be withheld from that

contractor. NYSDOT's only obligation with regard to the volume of work is to order the minimum dollar value of the contract which is often time met by issuing the first job order.

The structure of the contract distinguishes Job Order Contracting as the first true public sector performance based contracting process. It is in the contractor's best interest to provide the maximum volume of work. NYSDOT has tied future work to current satisfactory performance. Therefore, the contractor is motivated to provide the highest quality work in the most responsive manner.

### **1.3 Minimum RFP Responsiveness**

Any Proposer that does not provide **ALL** the following **by the Proposal Submission Deadline** will be determined to be non-responsive and will be removed from further consideration (prior to the technical evaluation of Proposals).

1. Part I: Technical and Management Proposal/Submittal
  - #1 Electronic Copy of Part I – Technical and Management Proposal/Submittal in Adobe PDF Format submitted via email to the RFP's Designated Contact
  - Signed Cover Letter on official business letterhead
  - Table of Contents identifying each major section and page numbers
  - Narrative Description
  - Approach, Scope of Services and Schedule
  - Organization and Staffing
  - Experience
  - Sample Unit Price Book (UPB)
  - Attachment #15: Key Personnel Reference Forms
2. Part II: Cost and Administrative Proposal/Submittal
  - #1 Electronic Copy of Part II– Cost and Administrative Proposal/Submittal in Adobe PDF Format submitted via email to the RFP's Designated Contact
  - Complete and submit online certification or hard copy of Vendor Responsibility Questionnaire
  - Attachment #2: Consultant Information and Certification Form
  - Attachment #3: Form AOR Acknowledgement of Receipt
  - Attachment #4: Procurement Lobbying Law Forms
  - Attachment #6: Non-Collusive Bidding Certification
  - Attachment #7: Vendor Assurance of No Conflict of Interest or Detrimental Effect
  - Attachment #11: M/WBE/SDVOB Participation Information Form
  - Attachment #11a: M/WBE/SDVOB Subconsultant Participation Solicitation Log
  - Attachment #13: New York State Business Reporting
  - Attachment #14: Diversity Practices Questionnaire
  - Attachment #18: Cost Proposal

### **1.4 Designated Contact**

Potential responders are advised that under New York State Finance Law Section 139-j, communication on procurements can be made only to designated contact persons. The Department's Designated Contact for this Procurement is:

Primary Contact:  
Shalina Mallory  
New York State Department of Transportation  
Office of Contract Management  
50 Wolf Rd, 6<sup>th</sup> Floor  
Albany, NY 12232  
(518) 457-9101  
Email: [Shalina.Mallory@dot.ny.gov](mailto:Shalina.Mallory@dot.ny.gov)

Secondary Contact:  
Patricia Kappeller  
New York State Department of Transportation  
Office of Contract Management  
50 Wolf Rd, 6<sup>th</sup> Floor  
Albany, NY 12232  
(518) 457-2600  
Email: [Patricia.Kappeller@dot.ny.gov](mailto:Patricia.Kappeller@dot.ny.gov)

The above-named persons, as the Department's Designated Contacts shall be the Department's only points of contact and sources of information for this procurement.

### **1.5 RFP Modifications**

If necessary, NYSDOT will issue Modifications to modify conditions or requirements of this RFP. Proposers are advised to visit the NYSDOT website: (<https://www.dot.ny.gov/doing-business/opportunities/consult-opportunities>) regularly to check for Modifications. The final Modification will be posted on NYSDOT's website not later than seven (7) calendar days prior to the Proposal Due Date. If an additional Modification is required within the seven (7) calendar days, the Proposal Due Date shall be revised such that there will be seven (7) calendar days from the final Modification to the Proposal Due Date.

## 2 Civil Rights Requirements

### 2.1 Disadvantaged Business Enterprise Participation Requirements

“Not Applicable”

### 2.2 Minority and Women-Owned Business Enterprise and Service-Disabled Veteran-Owned Business Enterprise Participation Requirements

While not indicative of a Proposer’s individual merit (technical excellence, Proposer’s ability, experience, etc.), NYSDOT encourages the participation of certified Minority Business Enterprises (MBE), Women-Owned Business Enterprises (WBE), and Service-Disabled Veteran-Owned Businesses (SDVOB) in its solicitations. The level of M/WBE/SDVOB participation will be relevant to the process of selecting Proposals that will achieve the overall goals of the Department. A directory for certified MBEs and certified WBEs is available from NYS Empire State Development’s searchable database website: <http://www.esd.ny.gov/mwbe.html>. A directory for certified SDVOBs and how a firm can become certified as an SDVOB is located on the NYS Office of General Services website at: <https://ogs.ny.gov/veterans>.

For this specific procurement, NYSDOT has established a **MBE** participation goal of **five percent (5%)**, a **WBE** participation goal of **ten percent (10%)**, and a **SDVOB** participation goal of **six percent (6%)**. Meaningful participation by either a prime consultant **who is certified as a M/WBE or SDVOB** or inclusion of subconsultant(s) **who is/are certified as a M/WBE or SDVOB** count towards the M/WBE or SDVOB goals, respectively. Meaningful participation is defined as providing commercially useful functions or services. These services should:

- Result in a product or service distinguishable from the Prime Consultant’s product or service or be a part of the services provided by the Prime Consultant;
- Be for scope of service elements which can be and are completely performed, supervised, and managed by the M/WBE or SDVOB consultant; and/or
- Perform significant tasks which can be considered commercially marketable.

Interested Proposers should verify their attainment of the above established DBE participation goal by completing **Attachment 11: M/WBE/SDVOB Participation Information**. To count towards the Department’s M/WBE/SDVOB goals, a firm offering M/WBE/SDVOB participation must be currently certified by the NYS Empire State Development M/WBE directory or NYS Office of General Services SDVOB directory. If the Proposal does not meet the M/WBE/SDVOB participation goals, the firm must provide evidence of a good faith effort by completing **Attachment 11a: M/WBE/SDVOB Subconsultant Participation Solicitation Log**. **Additionally, if the Proposer does not meet the specified goals**, the Proposer must provide a **Goal Attainment Explanation Letter** explaining why the Proposer was unable to meet the M/WBE/SDVOB participation goals (in full or if partially), which serves to substantiate the Proposer’s good faith effort. The letter should include sufficient justification as to why the goal was not met or was met partially and should, at a minimum, address the following factors: the Proposer’s method of accomplishing the work, the subcontracting opportunities associated with the proposed approach and scope of services, the availability of certified firms for the work to be performed by either a prime consultant or via subcontract.

The above forms and letter must be included in Part II: Cost and Administrative Proposal/Submittal. Firms are advised to refer to Section 6 for the procedure by which NYSDOT will follow in evaluating a firm's proposed M/WBE/SDVOB participation.

### **2.3 Diversity Practices**

NYSDOT evaluates the diversity practices of prime consultants to ensure that certified minority and women-owned businesses are given the opportunity for maximum participation in state contracts. Diversity practices are a legal requirement and may include past, present, or future actions and policies which show interaction in developing M/WBE firms.

Proposers shall submit **Attachment 14: Diversity Practices Questionnaire** with Part II: Cost and Administrative Proposal/Submittal, which will be evaluated during the procurement process.

### **2.4 Title VI Assurance**

The New York State Department of Transportation (NYSDOT), in accordance with Title VI of the Civil Rights Act of 1954, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation and Title 23, Code of Federal Regulations, Part 200, Title VI Program and Related Statutes, as amended, issued pursuant to such Act, hereby notifies all who respond to a written solicitation, request for proposal, or invitation for bid, that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, age, disability/handicap and income status in consideration for award.

### **2.5 Equal Employment Opportunity**

In accordance with New York State Executive Order 162, issued on January 9, 2017, the Consultant shall provide workforce utilization reports in accordance with RFP Attachment 1, Draft Contract.

### 3 Project and Contract Objectives

#### 3.1 Project Objectives

The objective of this project is to contract with a responsive, responsible, and qualified consultant to provide a comprehensive JOC system and web-based management and information program.

JOC system contracts will be developed to cover maintenance activities statewide (for NYSDOT Regions 1 through 11) related to State-owned highway, bridge, culverts, overhead sign structures and other roadside appurtenances. The base term for a JOC contract is one year, with the completion date beginning one year from the date the contract is awarded by the NYS Office of the State Comptroller (OSC). The contract proposal will be published to indicate this one-year completion date. The maximum initial contract value for all state and federally funded JOC's in Regions 1-7 and 9 is \$1.0 Million prior to the application of the Consultant's Bid Factor(s). The maximum initial contract value for all state and federally funded JOC's in Region 8, 10 and 11 is \$2.0 Million prior to the application of the Consultant's Bid Factor(s). JOC contracts cannot extend beyond four (4) years from the date of award and cannot exceed four times (4x) the original contract value, whichever occurs first. NYSDOT will limit JOC's to one per County or one per Region per type.

For Proposal development planning and bid purposes, proposers should project that an estimated \$90 Million worth of maintenance and repair contracts will be made using the JOC System during the initial three (3) year contract. The average dollar value of a job order from a NYSDOT "D" contract is approximately \$75,000. JOC orders are capped at not more than \$100,000 per order.

While NYSDOT currently projects an above level of activity for maintenance and repair contracts, there is no minimum guaranteed number of JOC contract work that will be made during any given year, nor is there a maximum amount of JOC contract work for any given year or for the total contract term.

#### 3.2 Contract Objectives

To obtain the services of a responsive, responsible, experienced and knowledgeable Consultant via a fair and equitable Best Value RFP. A single contract award shall be made with only one Prime Consultant for Contract #C038061.

#### 3.3 Definitions and Acronyms

**Definitions.** As used in any of the documents forming this RFP or Contract, the following terms shall have the following meanings (bold font added here only for emphasis)

**"Consultant-Owned Software"** means Software developed and owned by the Consultant or its subconsultants which either pre-exists, or whose development is not funded by this Contract.

**"Contract Development Phase"** this phase incorporates the activities necessary to establish the structure of NYSDOT's JOC program, inform internal NYSDOT staff as well as the contracting community about NYSDOT's JOC program, and assist with procurement of the



JOC construction contractors and the development of the execution procedures that NYSDOT will use in executing the JOC program.

**“Commissioner”** means the Commissioner of the New York State Department of Transportation or their duly authorized representative

**“Developed Software”** means any Job Order Contracting System Software and associated documentation that are specific to the Project Scope and Deliverables developed under this Contract.

**“Enhancement”** shall mean changes or additions to Software, other than Maintenance Releases, new versions, or modifications, tailoring and/or customizations resulting from Integration Services that improve features or functions, add new features or functions, or improve performance.

**“Equipment”** for Commercial-Off-The-Shelf Software or Consultant-Owned Software, Equipment consists of any computer or computer system on which such software may be used pursuant to the relevant license; for Developed Software, Equipment consists of any computer or computer system.

**“Error”** shall mean any error, problem, or defect resulting from: (1) and incorrect functioning of code, or (ii) any failure of a deliverable to meet specifications.

**“FHWA”** means the Federal Highway Administration, an operating administration of the U.S. Department of Transportation.

**“Licensed Software”** means the Consultant-Owned Software licensed by the Consultant pursuant to the Contract.

**“Government”** means the U.S. Government acting through FHWA.

**“Integration Software”** shall mean the programming and technical support provided by Consultant to develop modifications to the Software, including services to tailor and customize Software to the Project, as such services may be set forth in the Scope of Services.

**“Intellectual Property”** means all tangible and intangible property rights, including, but not limited to, the source code, copyrights, patents, trademarks and any other form of intellectual property rights covering any databases, software, inventions, training manuals, content, menu structure, speech or sound files, vocabulary, HTML pages/code, graphics, data, look-and-feel, passwords, encryptions, phone numbers, domain names, systems design or other proprietary information in any form or medium.

**“Job Ordering Contracting System”/“JOC System”** means the fully developed and deployed Job Order Contracting System developed under this Contract, and for NYSDOT, inclusive of (unit price books, supplemental technical specifications, web-based management program, software, services, training, and support) to be provided or developed by

Consultant, as more fully described in the Scope of Services as defined below, together with the software licensing described in this Contract.

**“Maintenance Release”** shall mean an error correction, maintenance or emergency release of Software, including any modifications or revisions to Software which correct error in Software.

**“New Version”** shall mean a new release of Software, other than enhancements, Maintenance Releases or modifications, tailoring and/or customization resulting from Integration Services, or a new option not previously available which add to Software significant new features, functions or capabilities or significant improvements in performance. Such new Release/option shall be deemed a New Version rather than a Maintenance Release only if and so long as Consultant continues to maintain, enhance and market the Software without such new release/option and generally charges its maintenance clients as additional charge.

**“OTM”** is the Office of Transportation Maintenance at NYSDOT and is responsible for the administration of the JOC consultant contract and all matters relating to the JOC system.

**“Payment Schedule”** means the items, amounts associated therewith and the compensation method and compensation schedule set forth in **Schedule B** of the Contract.

**“Piggyback Contract”** means a contract let by any department, agency or instrumentality of the United States government, or any department, agency, office, political subdivision or instrumentality of any state or state(s) which is adopted and extended for use by the OGS Commissioner in accordance with the requirements of the State Finance Law.

**“Project”** means the provision or development of, testing, evaluation, deployment and support of the Job Order Contracting System Software hereunder.

**“Production System”** means an automated application or process that is used by NYSDOT to conduct day-to-day business.

**“Scope of Services”** means the, Schedule A – Scope of Services, followed by NYSDOT’s Request for Proposals for Job Order Contracting System Services for NYSDOT for Contract #C038061, which includes the RFP itself, the RFP Modifications, the written RFP evaluation clarification question requests, and clarification questions, and the Best and Final Offer (BAFO) request, followed by the Consultant’s Proposal, which includes Part I - Technical and Management Proposal/Submittal, Part II – Cost and Administrative Proposal/Submittal, written RFP evaluation clarification question responses, and the Consultant’s BAFO response.

**“Software”** means the computer programs (including any security devices) in object (and, in the case of Developed Software, also source code) form, in whole or in part, provided by Consultant and whether provided on magnetic or optical disk, tape, firmware, or otherwise,

including all or any portion of the Software incorporated in another program. The Software shall, as appropriate, include Documentation and Maintenance Releases.

**“Software Modification”** shall mean any products resulting from Integration Services, modification, tailoring, and or customization of Software excluding Maintenance Releases, Enhancements or New Versions, performed to Software by or on behalf of Consultant for the Project as set forth in the Scope of Services.

**“Software Documentation”** means the manuals, installation instructions and other materials which are provided with the Software whether in printed form or otherwise.

**“Subsystem”** means an automated application or process that incorporates the capabilities, features, data and/or reporting required of a specific business function or process and that may or may not integrate with other subsystems to serve an enterprise need. For example, General Ledger, Purchasing, Accounts Payable, Accounts Receivable, Inventory Accounting, etc. are all subsystems of an enterprise Financial Information System.

**“Support Services”** shall mean the support services provided by the Consultant in respect to the Software and Maintenance Releases, enhancements and/or new versions made to the Software.

**“System Documentation”** means any manuals, reports, instructions and other materials for design specifications, programming specifications, operating and maintenance instructions acquired or developed by Consultant for the Project.

**“Technical Specifications”** The Department’s latest standard specifications and standard sheets and any specifications supplements outlining the quality of workmanship and materials for any tasks that are not in the Department’s standard specification and sheets. NYSDOT specifications must be used as a basis for estimating item costs in the Unit Price Book.

**“Third-Party Commercial-Off-The-Shelf Software”** means Software that is ready-made and available for sale, lease, or license to the general public, with functionality and complexity defined by market need and which is not developed by the Consultant or its subconsultants for the Project, but which is acquired commercially.

**“Unit Price Book (UPB)”** A catalog of pre-priced construction tasks with recent, up-to-date prices based on local labor, material and equipment costs; each catalog is scoped for a particular repair and maintenance work scopes (See Section 4.3.3.1 for JOC scopes). The minimum coverage area for a UPB is a county. The largest is a NYSDOT Region.

**“Web-based Management and Information Program”** is the Consultant’s web-based program and software that will be utilized by NYSDOT and its contractors to fully deliver and administer the JOC System.

### **3.4 Contract Term and Rate Adjustments**

NYDOT estimates that the work for the successful consultant will commence on **November 1, 2022**. The base term or duration of the contract is three (3) years. The contract may be extended for up to two (2) one-year periods upon written agreement of both parties and approval of the Office of the State Comptroller and FHWA.

## **4 Scope of Services**

### **4.1 Project Overview**

The general scope of services for this RFP is to provide a Job Order Contracting System and a web-based management and information program that enables NYSDOT to produce and deliver Job Order Contracts for maintenance and repair related activities on their assets, including, but not limited to highways, culverts, bridges, overhead sign structures, or any combination thereof.

### **4.2 Tasks**

Detailed descriptions of each task is located in **Attachment 17: Scope of Services Detailed Task Descriptions**.

Task 1 – Development, Implementation, and Execution of the JOC System Structure

Task 2 – Development, Installation and Testing the JOC System and a Web-Based Management and Information System on both NYSDOT and Contractor Systems

Task 3 – Development of JOC System Documents

Task 4 – Provide Comprehensive JOC System Support and Maintenance

Task 5 – Provide Training to NYSDOT and Contractor Staff

Task 6 – Contract Transition

### **4.3 Organization and Staffing**

The qualifications and prior experience of the Proposer are of great importance to NYSDOT. The Proposer will create an organization chart that describes the reporting relationships of all key personnel identified in **Attachment 16: Contract Job Titles, Duties, and Qualifications**.

### **4.4 Deliverables**

Automated System Components

- a. Unit Price Books
- b. Supplemental Technical Specifications, including any Contractual Terms and Conditions, and other required bidding documents
- c. Web-Based Management Information and Support System

Technical Training and Manuals

- a. Technical Support (for the life of the contract)
- b. Annual JOC Usage Report
- c. Implementation, Training and support of the JOC System in NYSDOT OTM and all NYSDOT Regions

All task specific deliverables are defined in **Attachment 17: Scope of Services Detailed Task Descriptions**. All records/reports must be in Microsoft Word, Excel, Adobe PDF or another format acceptable to NYSDOT. Documents must be available when requested by NYSDOT or automatically shared with NYSDOT in electronic format via email or managed file transfer (for larger sized documents). Should NYSDOT want to review records

pertaining to this contract at the Consultant's office, NYSDOT shall be given access to those files upon reasonable notice.

The Consultant shall maintain all records at a location accessible by NYSDOT staff and in an electronic format acceptable to NYSDOT. Per the contract, all records produced under this contract are property of NYSDOT. Should the work between NYSDOT and the Consultant be terminated, all records shall be turned over to NYSDOT or its designated recipient.

#### 4.5 Schedule

<b>Time Frame</b>	<b>Deliverable</b>
Within 60 days of contract award	Provide to the Department a customized Unit Price Book (and accompanying Technical Specifications) containing at least sixty thousand (60,000) construction tasks
Within 90 days after advertising JOC construction contracts	Provide to the Department access to the JOC system and train the Department staff in the use of the software
For 90 days after the first JOC construction contract award*	Remain available to the Department to provide technical assistance
Within 30 days of JOC construction contract awards	Train JOC construction contractor's staff in the use of the JOC system

\*For the purposes of the above table, "contract award" is defined as being the later of either OSC contract approval or the contract term start date.

## 5 Proposal Content and Format

For the purposes of evaluation, each Proposal must be submitted in two (2) parts. Part I shall consist of the Technical and Management Proposal/Submittal. Part II shall consist of the Cost and Administrative Submittal/Proposal.

Each part of the Proposal must be complete in order that the evaluation of both parts can be accomplished independently and concurrently, and the Technical and Management Proposal/Submittal can be evaluated strictly on the basis of merit. **Cost information must not be included in the Part I: Technical and Management Proposal/Submittal.** The Proposal should follow the format listed below.

**Note:** NYSDOT will protect confidential and proprietary information from disclosure to the extent permitted by the Freedom of Information Law (“FOIL”), Article 6 of the Public Officers Law. If an offerer believes information included in their Proposal is confidential and proprietary, they should identify those pages of their Proposal which contain such information as “Confidential and Proprietary”. Additionally, offerers need to explain the reason(s) why this information should be considered exempt from public disclosure under FOIL. This information is to be provided in the Cover Letter.

**Note:** *Cost information is **NOT** to be included in Part I: Technical and Management Proposal/Submittal. Technical information is **NOT** to be included in Part II: Cost and Administrative Proposal/Submittal.*

### 5.1 Technical and Management Proposal/Submittal

Part I shall include the following sections:

1. Cover Letter and Title Page, indicating:  
Name, address and phone number of the Proposer, and the name, title, address, email and telephone number of the person(s) with authority to negotiate and who may be contacted during the procurement process. Provide a brief description of the proposed approach, work effort, and resulting product. Confidential and proprietary information should also be identified and addressed in this section. Not to exceed one (1) double sided page each.
2. Table of Contents
3. Narrative Description  
Provide a brief description of the important issues involved in the implementation of this effort. Include enough substantive details to demonstrate an understanding of NYSDOT project objectives and familiarity with applicable laws, rules, etc.
4. Experience  
Firm Experience:  
The qualifications and prior experience of the Proposers are of great importance to NYSDOT. Direct or prior related experience in a JOC system for a public agency is highly desirable. Of particular interest is work done for agencies and municipalities responsible for the maintenance of public transportation systems and infrastructure,

particular heavy highway construction. Provide a list of projects currently in progress and those completed within the last five (5) years which are relevant to this project. Briefly define JOC systems that have been developed by your firm, including system objectives, application, when the system was put in-place, how long the system has been in operation, and if the JOC system is heavy highway oriented. Provide at least three successfully reachable firm referenced for previous, relevant work. Indicate proposed key personnel who are, or have worked, on such projects and are proposed for this effort. **Firm experience is not to exceed 10 pages.**

#### Key Personnel Experience

Include resumes for all key personnel (including any subconsultants) featuring relative past and on-going project work. **Resumes are not to exceed 4 pages for each Key Personnel proposed.**

Provide Attachment 15: Key Personnel Reference Form for all Key Personnel. Include names, addresses and phone numbers of contact points with the listed clients. NYSDOT reserves the right to request information from any source so named. **Attachment 15 is not to exceed 6 pages for each Key Personnel Proposed.**

The Key Personnel (as identified in Attachment 17: Contract Job Titles, Duties and Qualifications) proposed by the Proposer are an important factor in the evaluation of the Proposal. Thus, NYSDOT expects that the personnel proposed will be available at the start of the contract term.

#### 5. Approach to Scope of Services

Describe the approach for performing the work and accomplishing project objectives. A detailed scope of services is provided in Attachment 17: Scope of Services. Base the approach on these tasks or suggest alternative tasks which could improve the ability of the project to meet its objectives. NYSDOT wants to allow flexibility for the inclusion and consideration of ideas, initiative and creativity of the Proposer. Alternative tasks and suggestions are encouraged and will be reviewed with interest within the framework of the stated objectives and scope of services for the project. Fully explain and justify the proposed approach if it significantly departs from the general scope of services. Also, include a schedule for completion of the project showing the duration of each task and all major milestones, and include a list of technical assumptions. **Approach to Scope of Services is limited to 10 pages.**

#### 6. Organization and Staffing

Provide an organization chart for the project showing the names of the Proposer's Key Personnel (including subconsultants). Provide a narrative description of the role of subconsultants, if any are proposed, the specific need for the expertise and describe the terms of the subconsultant agreement. Describe the plan for phasing project personnel into the effort. The Consultant Project Manager shall serve as the primary contact with the NYSDOT Project Manager and is responsible for the performance of all key personnel, production staff, and support staff assigned to the contract, as well as contractual matters on the Consultant's side. Describe the level of any type of interaction



with NYSDOT. Include an estimate of total level of effort hours contributed to each of the contract staff titles to each task and an estimate of total level of effort hours for each task. **Note:** The level of effort hours must match the level of effort hours included on Attachment 18: Cost Proposal Workbook.

7. Demonstration of Unit Price Book (UPB)

A sample of the UPB supplied by the Consultant should include a variety of itemized prices for detailed heavy highway work activities. Itemized prices for work activities should include price differentials for such consideration as quantity price breaks, materials options, and equipment options for the variety of work scopes identified in Attachment 17, Task 3.1 “Unit Price Book”.

## 5.2 Cost and Administrative Proposal/Submittal

Part II shall consist of the Cost and Administrative Proposal/Submittal

1. Cost Proposal Section

Proposers are instructed to present a fixed percentage usage fee using Attachment 18: Cost Proposal, based on all of the information contained in this RFP. Proposers are to base that usage fee on the dollar value of each JOC contract. Provide the estimated total cost to the State for the three (3) year base term of the Contract based on the fee(s) of a total JOC contracting amount of \$50 Million over three (3) years. Include an attachment to the Cost Proposal explaining all assumptions.

The proposed fixed percentage usage fee will remain unchanged through the base term of the Contract. The fixed usage fee must be offered as a percentage of the maintenance and repair Job Orders contracted out by NYSDOT via the JOC System value (for example: 1.21% of the maintenance and repair Job Orders contracted out). The fixed usage fee must cover all consultant costs for full provision of all JOC System services to NYSDOT over the base term of the Contract. NYSDOT will not reimburse the Consultant for any other expenses during the term of the contract (including any extensions).

The total anticipated maintenance and repair Job Orders contracted out is estimated to reach or exceed \$90 Million over the initial three (3) year base term of the Contract. This anticipated value is based on the historic annual usage with an estimated increase usage, as presented in the following table:

Year	JOC Usage Constructed Value (\$M)
2013	\$18,299,594.85
2014	\$25,647,982.15
2015	\$23,663,830.12
2016	\$18,504,528.72
2017	\$16,130,409.95
2018	\$15,543,191.28
2019	\$13,838,694.89

2020	\$12,378,161.85
2021	\$9,003,007.59
2022*	\$15,000,000.00
2023*	\$15,000,000.00
2024*	\$20,000,000.00
2025*	\$20,000,000.00

\*Estimated

NOTE: As mentioned previously, for proposal development planning and bid purposes, Proposers should project that \$50 Million worth of maintenance and repair contracts will be made using the JOC System during the initial three (3) year base term of the Contract. However, while NYSDOT currently projects \$50 Million in activity for JOC maintenance and repair contracts, there is no minimum guaranteed number of JOC contract work that will be made during any given year, nor is there a maximum amount of JOC contract work for any given year for or for the total contract term.

## 2. Administrative Section

### a. Vendor Responsibility

In accordance with the NYS Finance Law, NYSDOT will only make contract award to vendors that are determined to be responsive and responsible. All Proposers of contracts valued at \$100,000 or more, and subconsultants with services valued at \$100,000 or more shall be required to submit a Vendor Responsibility Questionnaire through the office of the State Comptroller at:

<http://www.osc.state.ny.us/vendrep/index.htm> and include a copy of the online certification, or include a hard copy of the completed Vendor Responsibility Questionnaire.

### b. Acceptance of Contract Terms and Conditions

Proposers shall complete and submit Attachment 2: Consultant Information and Certification Forms, to indicate their acceptance of all terms and conditions contained in Attachment 1: Draft Contract. Attachment 2 requires the signatures of an official authorized to bind the Proposer to all provisions, a statement certifying that the Proposal shall remain valid for 365 days, a statement that the Proposer accepts the RFP's Scope of Services "as-is", and a statement, that if awarded the contract, the Proposer will comply with all requirements of the RFP, including all attachments. Altering this form without the prior written approval of NYSDOT, is prohibited and may lead to the Proposal being deemed non-responsive and subsequently dismissed.

**No exceptions to any of the draft contract terms and conditions will be entertained by NYSDOT.** Conditional Proposals will be deemed non-responsive.

### c. Modification Acknowledgement Form

Complete and submit Attachment 3: Acknowledgment of Receipt (AOR), indicating receipt of any Modifications and Q&A issued by NYSDOT.

### d. Procurement Lobbying Law (PLL)

All Proposers should become familiar with NYSDOT's Procurement Lobbying Law Interim Guidelines and Procedures. The document is listed at:

[https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/pll\\_gandp\\_v1.pdf](https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/pll_gandp_v1.pdf)

Filing the two required PLL forms is mandatory for all consultants in order to be considered for contract award. These forms are:

Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j(3) and §139-j(6)(b)

[https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/offers\\_affirmation\\_and\\_agreement\\_form.pdf](https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/offers_affirmation_and_agreement_form.pdf)

Offerer Disclosure of Prior Non-Responsibility Determinations:

[https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/offer\\_disclos\\_prior\\_non.pdf](https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/offer_disclos_prior_non.pdf)

For additional information refer to Attachment 4: Procurement Lobbying Law Compliance.

e. Non-Collusive Bidding Certification

All Proposers shall complete and submit Attachment 6: Non-Collusive Bidding Certification.

f. Vendor Assurance of No Conflict of Interest or Detrimental Effect

All Prime Proposers and Subconsultants shall complete and submit Attachment 7: Vendor Assurance of No Conflict or Detrimental Effect.

g. Civil Rights Participation

Complete and submit Attachment 11: M/WBE/SDVOB Participation Information, and if applicable, Attachment 11a: M/WBE/SDVOB Subconsultant Participation Solicitation Log and Goal Attachment Letter. Provide the legal names of all certified M/WBE/SDVOB consultants (Prime and/or subconsultants).

h. New York Business Reporting

Complete and submit Attachment 13: New York Business Reporting.

i. Diversity Practice Questionnaire

Complete and submit Attachment 14: Diversity Practices Questionnaire.

Use Contract Number C038061 wherever requested in the forms. Per Procurement Lobbying Law of 2005 only the individuals identified as Designated Contacts in Section 1.4 of this RFP shall be contacted if you have any questions.

## **6 Criteria for Evaluation of Proposals**

### **6.1 General**

Proposals shall be pre-screened to determine if they meet the minimum RFP responsiveness, referenced in Section 1.3. Those which do not shall be deemed non-responsive and shall be removed from further consideration. As part of the pre-screening process, the proposed Civil Rights Participation percentages shall be reviewed. To count towards NYSDOT's participation goal, each firm must be currently listed in the NYSUCP (DBE/M/WBE) or OGS list of certified SDVOBs. If the proposed participation is less than the established goals(s) in Section 2.6 the Proposer's evidence of Good Faith Efforts (Subconsultant Participation Solicitation Log) along with a Goal Attainment Explanation Letter will be reviewed. During the review, which will include verification of a Proposer's Good Faith Effort evidence, if it is determined by NYSDOT that the Proposer did not provide an acceptable Good Faith Effort, then the Proposal will be deemed non-responsive and will be removed from further consideration.

Proposals shall then be evaluated by the Department using a Best Value Method evaluation process based on the technical and cost criteria described below. Technical considerations are of greater importance than pricing considerations, however, price is a significant factor in the Department's evaluation of Proposals. Technical Proposals will be scored based on the information provided under Section 5.1 in accordance with the pre-established criteria listed in Section 6.2. The cost portion of Section 5.2 will be point scored in accordance with the pre-established criteria listed in Section 6.3.

Technical and Management Proposal/Submittal evaluation will be accomplished by a representative committee comprised, as appropriate, of technical, program and management personnel. Committee members will score each Proposal individually and then meet as a group to discuss the Proposals. Evaluators will be allowed to revise scores on the basis of committee discussions. Only Proposals determined to be technically acceptable and subject for contract award will be considered further and have their Cost Proposal included in the selection process.

Proposers responding to this RFP may be requested to clarify issues or to provide additional insights into their Proposal through written clarifications and/or technical interviews/demonstrations. If written clarifications are required to complete the technical evaluation of Proposals, evaluators will be allowed to revise their technical scores based on this clarifying information. Furthermore, the Department reserves the right to ask clarifying questions regarding each Cost Proposal (included in Part II: Cost and Administrative Proposal/Submittal) and DBE or M/WBE/SDVOB participation as well.

The Department reserves the right to request best and final offers from firms that are determined to be susceptible to contract award.

### **6.2 Technical and Management**

The Technical and Management Proposal will be scored and will represent 50% of the total score for a Proposal. The major evaluation criteria are listed below:

- a. Experience (Up to 20 points)
  - i. Quality, extent and relevance of experience, education and training of the Firm (including Prime and Subconsultants) in developing and implementing a JOC System for a public agency, particularly for an agency responsible for the maintenance of public transportation systems. NYSDOT reserves the right to contact any named reference to verify experience. (Up to 10 points)
  - ii. Quality, extent and relevance of experience, education and training of the Key Personnel (including Prime and Subconsultants) in developing and implementing a JOC System for a public agency, particularly for an agency responsible for the maintenance of public transportation systems. NYSDOT reserves the right to contact any named reference to verify experience. (Up to 10 points)
- b. Schedule of Unit Price Book Delivery (Up to 15 points)
  - i. Quality, completeness and reasonableness of the Consultant's proposed schedule of delivery for the Unit Price Book. (Up to 15 points)
- c. Quality of Proposal and Approach to Scope of Services (Up to 10 points)
  - i. Quality of approach to the scope of services for implementing a JOC system and accomplishing project objectives as follows: Quality of proposer's resources relative to the needs of the project; initiative and creativity of the Proposer; and reasonableness of project assumptions/. (Up to 5 points)
  - ii. Degree to which the proposal reflects and understanding of general issues impacting JOC system implementation within the NYSDOT OTM. Understanding of the types of work performed by a public transportation infrastructure maintenance or similar organization. Degree to which proposal reflects and understanding of potential problems to be encountered in implementing, training, servicing, and administration of JOC in a public sector transportation or similar agency and their proposed solution. (Up to 5 points)
- d. Organization and Staffing (Up to 5 points)
 

Quality of project organization as follows: Ability of prime firm to manage project; reasonableness of staff/task allocation for each task and total effort; Quality of plan for phasing key personnel into the project, including subconsultants, if any. (Up to 5 points)

### **6.3 Cost**

The Cost portion of Part II: Cost and Administrative Proposal/Submittal will be point scored and will represent 40% of the total score for a Proposal. The calculation of a cost score will be based on the following method:

1. The calculation of the Cost Proposal will be determined by deriving the relative costs of a firm's offer by multiplying the proposed fixed percentage usage fee for services times the RFP's assumed contracting of \$90 Million over the three (3) year base term of the Contract. The Proposal with the lowest overall derived cost will receive the full amount of points.

2. Proposals with higher overall derived cost will receive proportionately lower Cost Proposal scores.
3. This point total will be calculated by dividing the lowest proposed derived cost by the derived cost of each Proposal, multiplied by the maximum weight for the Cost Proposal (40%).
4. Cost Proposal scoring results shall be used to determine which Proposals are to be shortlisted for technical interviews and/or susceptible to contract award. A final Cost Proposal score shall be calculated once all Cost Proposal evaluations have been completed.

#### **6.4 Shortlisting**

The shortlisting rule for this solicitation shall be: Any Proposer within 10 points of the top initial Best Value ranked Proposal will be shortlisted. Cost evaluation results shall be considered along with the initial weighted written Technical Proposal score results (after-group discussion) to determine the initial offered Best Value, which shall lead to short listing of firms based on an initial Best Value determination (determined to be mathematically susceptible to contract award).

#### **6.5 Technical Demonstration**

Technical Demonstrations will be scheduled for all Proposer's that are Shortlisted. Technical Demonstrations will be held remotely via WebEx at a date and time determined by NYSDOT. The Technical Demonstration will be scored and will represent 10% of the total Proposal Score.

Scoring will be based on the following factors:

- a. Overall presentation of the proposed Job Order Contracting System and web-based management and information program to include, but not be limited to, the tasks listed in Section 4.2 of the RFP. (Up to 5 points)
- b. Presentation and communication abilities of the Proposer to use technology in the delivery of the service requirements as identified in Section 4 and Attachment 17. (Up to 3 points)
- c. Additional insights into technical aspects of the firm's proposal and ability to address and answer the technical evaluation committee's clarifying questions and any follow-up questions. (Up to 2 points)

#### **6.6 Written Technical Clarifications/Re-Score**

The Department reserves the right to seek written clarifications from firms submitting Proposals to assure a full understanding of their responsiveness to the Technical requirements. A Proposer may be required to provide written clarifications at any time during the Proposal evaluation process. Evaluators will be allowed to revise their Technical Proposal scores based on receipt and consideration of this clarifying information and follow-up committee discussions. Reasons for any score change shall be documented.

#### **6.7 Best & Final Offer (BAFO)**

The Department reserves the right to request Best and Final Offers (BAFO) from firms which make the shortlist. Any BAFO request may ask for additional further clarifying Cost

Proposal questions of Proposers to further clarify their submitted Proposals. Should the Department opt to request BAFOs, all shortlisted Proposers will receive a BAFO request. Responding Proposers will be allowed to submit a BAFO (Cost Only), Proposers may opt to not submit a BAFO. The Department's Designated Representative shall make the necessary, appropriate adjustments to that Proposer's Cost Proposal evaluation.

## **6.8 Proposal Withdrawal**

Should any firm withdraw their Proposal, the Department will remove that Proposals' technical and cost information from the Best Value evaluation documentation and shall recalculate the remaining Proposers' technical and cost scores (without the withdrawn Proposers' information).

## **6.9 Final Best Value Determination**

After evaluation of all technical information submitted by competing Proposers (i.e., initial written Technical Proposals, written clarifications, and possible BAFOs), the Department will add the perfected cost scoring results (up to 40 points), the weighted Technical Proposal score and the weighted Technical Demonstration score to generate the tentative final best value score by Proposer.

*Tie-Breaking Rule:* Should any of the tentative Final Best Value scores of one or more Proposals line within two (2) points of each other, then the State Finance Law Section §163(10)(a) shall be used to settle any ties.

Once all possible score ties have been cleared, the Department will determine the Proposal with the highest Final Best Value score and will recommend that Proposer to the Department's Executive Management for contract award.

## **6.10 Consultant Selection Recommendation and Tentative Contract Award**

A Consultant selection and designation memo shall be prepared and forwarded to the applicable Department's Executive Manager(s) with an accompanying evaluation process results report. The memo shall recommend selection of the top-ranked Best Value Consultant for tentative Contract award. The Executive Manager(s) will be asked to concur with the final conclusion of the Proposal evaluation process and designate the Best Value Consultant based upon the results.

Should negotiations with the Best Value Consultant fail to produce an agreed upon contract(s), then the Department's Executive Management will designate tentative contract award to the next highest ranked Best Value Consultant. This process may repeat itself until acceptable contract(s) are consummated.

At the conclusion of the evaluation process, an announcement of the Department's designation(s) will be posted on the Department website. All Proposers shall be notified in writing regarding the results from the solicitation and will be offered an opportunity to hold a debriefing. Debriefing requests should be made to the Department's Designated Representative within 5 calendar days from the date of the designation notice. Further, it is expressly understood that this Request for Proposals does not commit the Department to

award a contract, pay any costs incurred in the preparation of a Proposal to this request, or to procure or contract any services or supplies. Further, the Department shall have no obligation or liability whatsoever to the Consultant selected as a result of this solicitation unless and until a contract satisfactory to the Department is approved and executed by the Consultant and all necessary State officials.



## 7 Administrative Specifications

### 7.5 Proposal Submission

The Proposal shall be signed by an official authorized to bind the Proposer.

**Proposers shall submit one (1) electronic copy of Part I – Technical and Management Proposal/Submittal and one (1) electronic copy of Part II – Cost and Administrative Proposal via email or managed file transfer to the Designated Representative below.**

All Proposals must be received by the Department by **12:00p.m. (EST) on April 18, 2022.**  
The Proposal must be addressed to:

Shalina Mallory  
New York State Department of Transportation  
Office of Contract Management  
50 Wolf Rd, 6<sup>th</sup> Floor  
Albany, NY 12232  
(518) 457-9101  
Email: [Shalina.Mallory@dot.ny.gov](mailto:Shalina.Mallory@dot.ny.gov)

**ATTN: #C038061 - JOB ORDER CONTRACTING (JOC) SYSTEM SERVICES  
FOR NYSDOT**

### 7.6 State's Rights

All Proposals, upon submission to the Department, shall become its property for use as deemed appropriate. By submitting a Proposal, the Proposer covenants not to make any claim for or have any right to damages because of any misinterpretation or misunderstanding of the specification, or because of any misinformation or lack of information. The Department attests to the following prerogatives with regard to Proposals submitted:

1. To accept or reject any or all Proposals;
2. To correct any arithmetic errors in any or all Proposals;
3. To change the Proposal's due date upon appropriate notification to interested firms;
4. To eliminate any mandatory RFP requirement(s) or specification(s) unmet by all Proposers in the evaluation of received Proposals;
5. To adopt any or all of a successful Proposer's Proposal;
6. To negotiate modifications to the scope, milestone payments schedule and total cost, and contract terms and conditions with the selected Proposer prior to contract award only if it is in the best interest of the State to do so;
7. To disqualify a Proposer from receiving the award if such Proposer, or anyone in the Proposer's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts;
8. To revise/amend any provision of this RFP by written notification to Proposer's, prior to Proposal submission;
9. To make inquiries, by means it may choose, into the Proposer's background or statements made in the Proposal to determine the truth and accuracy of all statements made therein;

10. To select and award the contract to the Proposer whose proposal represents the best value to NYSDOT'
11. Conduct contract negotiations with the next responsible Proposer, should NYSDOT be unsuccessful in negotiating with the selected Proposer; and
12. Any contract entered into pursuant to an award of this solicitation shall contain a provision which grants the option to extend the terms and conditions of such contract to any other New York State agency. However, any response to this solicitation shall be based solely on the purpose of this solicitation and shall not factor in the possibility that this contract may, in the future, be applicable to other state agencies. Please be advised that any award made pursuant to this solicitation shall be based on the specific requirements of this solicitation only.

### **7.7 Consultant Responsibility When Proposing Former NYSDOT Employees**

It is the Consultant's responsibility to ensure they propose staff that is eligible to work on the proposed project. It is an individual's responsibility to comply with the Public Officer's Law.

The following procedure applies if either of the following criteria is met:

- It is two years or less between the date that the individual is proposed and the individual's date of separation from the State.
- The individual proposed has worked on the project while employed by NYSDOT regardless of how long ago they left NYSDOT.

#### Procedure

- Before the Consultant proposes an individual, the individual must obtain an opinion from the New York State Joint Commission on Public Ethics (<http://www.jcope.ny.gov>) that approves their participation in the project as they are proposed.
- A copy of this opinion must be on file in the Consultant's office and available for review by NYSDOT if requested.
- Failure to obtain New York State Joint Commission on Public Ethics approval for an individual's participation in a project may jeopardize the firm's designation for that project.

### **7.8 Method of Payment**

Payment for services provided under Contract #C038061 will be a fixed percentage of the total dollar amount of Department JOC maintenance and repair Job Orders actually contract out to repair and maintenance contractors. Requests for payments must be submitted monthly and be accompanied by supporting documentation as requested by the Department. Review and approval of payment requests will be made by the Department's Division of Operations prior to payment. The fixed percentage must cover all of the Consultant's cost under the resulting Contract #C038061, including, but not limited to, all direct or indirect costs and all costs associated with overhead, travel, training, support and maintenance services provided to NYSDOT and Authorized Users of the JOC System. Payment for services provided under the Contract resulting from this RFP will be fixed for the duration of the Contract unless changed by an executed Contract Amendment. The Consultant will

designate a Billing Representative who will be responsible for resolving any invoicing issues during the term of the contract.

Requests for progress payments and final payments shall be made by the designated consultant on standard payment request forms (FIN-421). Use proper procedures for billing each deliverable. Submit a draft billing to NYSDOT's assigned Project Manager via the following sample electronic billing: <https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions>. The sample spreadsheet contains all of the proper, required billing forms, as well as a sample billing. The Project Manager will respond via email either with comments/corrections or with an approval to submit the final billing. The last and final payment will become due and payable within thirty (30) days after delivery of the final deliverable(s) and standard NYS FIN 421 payment request form.

## **7.9 Information for Selected Consultant(s)**

### **1. Registration with NYSDOT**

Consultant firms entering into contracts with the New York State Department of Transportation (NYSDOT) as prime consultants, joint venture partners, or subconsultants, are required to electronically register their firm using the Consultant Selection System web application (CSSWeb) by creating and registering an account to: 1) create and assign Consultant Identification Numbers (CINs) for each office registered by the firm; 2) provide general firm information including, but not limited to, legal name, Federal Identification Number (FEIN), ownership type, DBE/MBE/WBE status, firm principals, and office(s) address information. All consultant firms participating in a potential Contract must be registered electronically with NYSDOT prior to that Contract being forwarded to the Office of the State Comptroller for approval. Registered firms are responsible for verifying and updating their registration information for the duration of the Contract.

Consultant Firm Registration instructions are available at:

<https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions>

Questions regarding the CSSWeb application and firm registration should be directed to the CSSWeb administrator at [css@dot.ny.gov](mailto:css@dot.ny.gov) or by telephone at (51) 457-2600.

### **2. Registration with Statewide Financial System (SFS)**

Should this solicitation lead to a designation, the Prime consultant(s) will be required to electronically register with the Statewide Financial System (SFS) – if not already registered. NYSDOT will initiate the registration process in the SFS application and then contact the Prime consultant to provide them with further direction for completion of the registration process. The results of this process is an established SFS vendor number assigned to the Prime Consultant. If a firm has already registered in SFS in conjunction with another procurement, it will not likely need to be registered for this opportunity. However, a SFS vendor number is firm name specific. Since many firms have different variations of their business identities, firms will be required to register in the name of the business entity that NYSDOT's is doing business with.

3. Consultant Employment Disclosure Requirements

Prime consultants should become familiar with the Consultant Employment Disclosure requirements, which went into effect June 19, 2006 at [https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/contractor\\_instr\\_forms\\_a\\_b.pdf](https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/contractor_instr_forms_a_b.pdf). The Consultant selected for this solicitation shall be required to complete “State Consultant Services – Contractor’s Planned Employment” (Form A, Attachment 5) and submit when the contract is signed. For each contract year thereafter, the Consultant shall complete the “State Consultant Services Contractor’s Annual Employment Report” (Form B, Attachment 5) and submit copies to the Office of the State Comptroller, the Department of Civil Service, and the Department of Transportation on or before May 15<sup>th</sup> of each year the contract is in effect.

4. Insurance Requirements

Please carefully read the terms and conditions of the draft contract appended as Attachment 1 of this RFP. Your attention is drawn to the insurance requirements for this project that are contained in Article 12 of the draft contract. These insurances are mandatory for the firm(s) selected as a result of this solicitation and will not be waived.

5. Contractor Tax Certification

Per section 5-a of the NYS Tax Law, all vendors selected for contracts in excess of \$100,000 for the sale of goods or services must complete and submit Forms ST-220-CA and ST-220-TD (Contractor Certifications). The forms and instructions are available at: [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf) (Form ST-220-CA) and [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf) (Form ST-220-TD).

6. Certification Form EO-177

In accordance with Executive Order No. 177, the successful Proposer will be required to certify that it does not have institutional practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law. Certification Form EO-177 will be provided with the contract documents. The completed and signed certification must be returned with the firm’s executed contract.

**7.10 Inquiries and Information**

All questions concerning this solicitation must be directed only to the individual(s) specified in Section 1.4 of this RFP. The last date to submit questions for this solicitation is stated in Section 7.8 below. Responses to all questions of a substantive nature, as well as copies of the questions, will be posted to the NYSDOT website.

**7.11 Protest Procedures**

The New York State Department of Transportation (NYSDOT) has established a protest procedure to be utilized when an interested party challenges a Non-Engineering consultant designation by NYSDOT. The complete procedure can be accessed via <https://www.dot.ny.gov/main/business-center/consultants/general-info>.

### **7.12 Tentative Schedule of Key Events**

NYSDOT will attempt to adhere to the following tentative schedule with regard to processing this solicitation:

RFP Release Date	March 14, 2022
Question Submittal Deadline	March 21, 2022 at 12pm EST
Question Response Deadline	March 28, 2022
Proposal Due Date	April 18, 2022 at 12pm EST
Evaluations	End of April 2022
Technical Interviews	Mid-May 2022
Recommendation & Designation	June 2022
Contract Finalization	July 2022
Contract Award	October 2022

**Attachment 1: Draft Contract**

**NEW YORK STATE DEPARTMENT OF TRANSPORTATION**

**COMPTROLLER'S CONTRACT NO.: C038061**

**PROJECT: JOB ORDER CONTRACTING (JOC) SYSTEM SERVICES FOR NYSDOT**

This Contract made pursuant to Section 14 of the Transportation Law, by and between THE PEOPLE OF THE STATE OF NEW YORK (hereinafter referred to as the "STATE") acting by and through the Department of Transportation (hereinafter referred to as the "DEPARTMENT" or "NYSDOT") whose office is at 50 Wolf Rd, Albany, NY 12232, and

**Consultant Firm Name**

**Consultant Firm Address**

**Consultant Firm Address**

(hereinafter referred to as the "Consultant")

WITNESSETH:

WHEREAS, the DEPARTMENT desires the CONSULTANT because of its ability and reputation, to perform the services hereinafter mentioned upon the PROJECT which is fully described in SCHEDULE A and the CONSULTANT agrees to provide these services.

NOW, THEREFORE, the parties hereto, for the consideration hereinafter named, do agree as follows:

**ARTICLE 1 – PERFORMANCE OF WORK**

The CONSULTANT shall perform all of the work described in SCHEDULE A and cause such work to be performed in an efficient and expeditious manner and in accordance with all of the terms and provisions of this CONTRACT. The CONSULTANT shall perform the work in accordance with professional standards and with the diligence and skill expected of a company with extensive experience in the performance of work of the type described in SCHEDULE A. The CONSULTANT shall furnish such personnel and shall procure such materials, machinery, supplies, tools, equipment and other items as may reasonably be necessary or appropriate to perform the work in accordance with this CONTRACT. The CONSULTANT'S Project Manager shall have the responsibility for the overall supervision and conduct the work on behalf of the CONSULTANT and that the persons described in SCHEDULE A shall serve in the capacities described herein. Any change of key personnel by the CONSULTANT shall be subject to the prior written approval of the STATE. The STATE reserves the option to extend the terms and conditions of this CONTRACT to any other state agency in New York subject to the approval of all necessary state officials.

The CONSULTANT shall commence work no later than ten (10) calendar days after receiving notice to proceed from the DEPARTMENT.

## **ARTICLE 2 – DOCUMENTS FORMING THE CONTRACT**

The CONTRACT documents shall be deemed to include this AGREEMENT (including Exhibits), the provisions required by state and federal law to be inserted in the CONTRACT as set forth in Appendix A, Appendix A-1, Appendix B, Appendix C, Appendix D, Schedule A (including Exhibits), Schedule B (including Exhibits), the DEPARTMENT’S Request for Proposals (RFP, dated [REDACTED], including any modifications) incorporated by reference, and the CONSULTANT’S Proposal (dated [REDACTED], including any clarifications) incorporated by reference.

## **ARTICLE 3 – ORDER OF PRECEDENCE**

In the event of any inconsistencies between or among the provisions and contents of this CONTRACT, it is agreed that such inconsistency shall be resolved in the following descending order of precedence:

1. APPENDIX A;
2. The provisions required by state and federal law to be inserted in the CONTRACT as set forth in APPENDIX A-1, APPENDIX B, APPENDIX C, and APPENDIX D.
3. This CONTRACT, including Signature Page, Notary Page, and Exhibits;
4. SCHEDULE A (including Exhibits);
5. SCHEDULE B (including Exhibits);
6. The STATE’S Request for Proposals (including any modifications); and
7. The CONSULTANT’S Proposal.

## **ARTICLE 4 – TERM OF THE CONTRACT**

The CONSULTANT agrees to complete all work of this CONTRACT as required within a 36 month base term, which shall commence on [REDACTED] and end on [REDACTED]. The CONTRACT may be extended for up to two (2) one-year periods as may be agreed by the parties to the CONTRACT and as approved by the Office of the State Comptroller (OSC).

## **ARTICLE 5 – MAXIMUM AMOUNT PAYABLE**

Item I – The maximum aggregate amount payable by the STATE to the CONSULTANT hereunder for the performance and completion of the work is \$ [REDACTED] unless increased by a CONTRACT AMENDMENT. It is understood and agreed that the STATE will only reimburse the CONSULTANT for approved costs incurred in the performance of authorized project tasks.

Item II – The CONSULTANT specifically agrees that the CONTRACT shall be deemed executory only to the extent of the monies available, and no liability shall be incurred by the STATE beyond the monies available for the purpose.

## **ARTICLE 6 – CONTRACT PAYMENT**

The CONSULTANT shall provide complete and accurate billing invoices to the DEPARTMENT to receive payment. Billing invoices submitted to the DEPARTMENT must contain all information and supporting documentation required by the CONTRACT, the DEPARTMENT and OSC. Payment for invoices submitted by the CONSULTANT shall only be rendered electronically unless payment by paper check is expressly authorized by the New York State Department of Transportation Commissioner (hereinafter referred to as the “COMMISSIONER”), in the COMMISSIONER’S sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices.

The CONSULTANT must enroll in the State Comptroller’s ePayments system to authorize electronic payments and acknowledges that it will not receive payment on any invoices submitted under this CONTRACT if it does not comply with the State Comptroller’s electronic payment procedures. Authorization instructions are provided on the State Comptroller’s website at: <https://www.osc.state.ny.us/vendors/epayments.htm>. For assistance, email [ePayments@osc.state.ny.us](mailto:ePayments@osc.state.ny.us).

## **ARTICLE 7 – PROVISION FOR PAYMENT**

Item I – The State shall pay to the CONSULTANT and the CONSULTANT agrees to accept as full compensation for its services under this CONTRACT:

1. (As negotiated per Schedule B). Compensation shall be a fixed percentage of the total dollar amount of each Department JOC maintenance and repair Job Order contracted out to maintenance and repair contractors.

Item II – The CONSULTANT specifically agrees that the CONTRACT shall be deemed executory only to the extent of the monies available, and no liability shall be incurred by the STATE beyond monies available for the purpose. In no event, however, will monies be deleted from this CONTRACT except pursuant to ARTICLE 17 hereof, entitled Termination.

## **ARTICLE 8 – PARTIAL PAYMENTS**

The CONSULTANT shall be paid in progress payments based on allowable costs incurred during the period in accordance with Article 7 of this CONTRACT established as follows:

Fixed Percentage Usage Fee as per SCHEDULE B.

The STATE will make payments to the CONSULTANT in accordance with Section 179(f) of the State Finance Law. Payments are subject to the approval of NYSDOT. Payments shall not be withheld unreasonably.

The CONSULTANT shall maintain and update once each month, if changes have taken place or are anticipated, the Project Schedule contained in SCHEDULE A.



The CONSULTANT shall inform the STATE and all subcontractors/subconsultants of the CONSULTANT'S schedule for submitting monthly vouchers to the STATE, said schedule shall be strictly adhered to by the CONSULTANT.

The CONSULTANT will not include any provisions in their subcontracts that would circumvent the intent of 49 CFR 26.29 to require the CONSULTANT to make partial payments to subcontractors/subconsultants within ten (10) calendar days after receipt of payment from the STATE.

All subcontractor/subconsultant vouchers received by the CONSULTANT at least ten (10) calendar days prior to a scheduled billing, shall be included in that billing, even if the CONSULTANT does not have other costs to be billed for that period. The CONSULTANT shall inform the subcontractor/subconsultant of the date the voucher was submitted to the STATE and the amount included for the subcontractor/subconsultant.

## **ARTICLE 9 – FINAL PAYMENT**

Section 179 of the State Finance Law required the STATE to make final payment within thirty (30) calendar days after receipt of an invoice which is properly prepared and submitted. The STATE in accordance with the provisions of State Finance Law has determined that the STATE will require a sixty (60) calendar day audit period for final payments at which time the 30-calendar day interest-free period will commence. The CONSULTANT is required to make final payment to all subcontractors/subconsultants within ten (10) calendar days of receipt of final payment from the State.

The acceptance by the CONSULTANT of the final payment shall operate as and shall be a release to the STATE from all claims and liability to the CONSULTANT, its representatives and assigns for any and all things done, furnished for or relating to the services rendered by the CONSULTANT under or in connection with this CONTRACT or for any part thereof except as otherwise provided in the paragraph below.

The CONSULTANT shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and make such materials available at its office at all reasonable times during the term of this CONTRACT and for the period of time specified in Clause No. 10., "Records" of APPENDIX A, for inspection by the STATE, Federal Highway Administration (FHWA), or any authorized representatives of the Federal Government and copies thereof shall be furnished if requested.

## **ARTICLE 10 – INSPECTION**

The duly authorized representatives of the STATE, and on Federally aided projects, representatives of the Federal Highway Administration (FHWA), shall have the right, at all times, to inspect the work of the CONSULTANT.

## **ARTICLE 11 – EXTRA WORK**

If the CONSULTANT believes that any work is, or may be, beyond the scope of the CONTRACT (extra work), or that additional work is necessary, the CONSULTANT shall notify the STATE, in writing of this fact prior to beginning any work. The notification shall include all information required by the DEPARTMENT. The STATE shall be the sole judge as to whether or not such work is in fact beyond the scope of this CONTRACT and constitutes extra work. No extra or additional work shall be started prior to written authorization from the STATE. The STATE shall be under no obligation to reimburse the CONSULTANT for any extra or additional work performed without the prescribed notification and authorization. The STATE will not allow fixed fee for any extra work undertaken without prescribed notification and authorization. In the event that the STATE determines that such work does constitute extra work, the STATE shall provide extra compensation to the CONSULTANT in a fair and equitable manner. If necessary, a CONTRACT AMENDMENT providing the compensation and describing the work authorized shall be issued by the STATE to the CONSULTANT for execution after approval have been obtained from necessary STATE officials, and if required, from the Federal Highway Administration.

In the event of any claims being made or any actions being brought in connection with the PROJECT, the CONSULTANT agrees to render the STATE all assistance required by the STATE. Compensation for work performed and costs incurred in connection with this requirement shall be made in a fair and equitable manner. In all cases provided for in this CONTRACT for the additional services above described, the STATE's directions shall be exercised by the issuance of a separate contract, if necessary.

## **ARTICLE 12 – CONSULTANT LIABILITY**

To the fullest extent permissible by law, the CONSUTLANT shall indemnify and save harmless the STATE, and any municipality, public benefit corporation, railroad, and/or public utility whose property or facilities are affected by the work, from suits, claims, actions, damages and costs, of every name and description arising from the work under its contract during its prosecution and until the final acceptance thereof. The CONSULTANT and any assigns, heirs, or successors in interest shall also indemnify and save harmless, to the fullest extent permitted by law, the inspecting engineer or inspector working for the STATE relative to the PROJECT from suits, claims, actions, damages and costs involving personal injury and property damage arising from the CONSULTANT'S work under the CONTRACT during its prosecution and until the final acceptance thereof. The STATE may retain such monies from the amount due the CONSULTANT as may be necessary to satisfy any claim for damages recovered against the STATE, any municipality and/or public benefit corporation, railroad, or public utility whose property or facilities are affected by the work or consultant inspecting engineers or inspectors working for the STATE relative to the PROJECT. The CONSULTANT'S obligation under this paragraph shall not be deemed waived by the failure of the STATE to retain the whole or any part of such monies due the CONSULTANT, nor where such suit, action, damages and/or costs have not been resolved or determined prior to release of any monies to the CONSULTANT under the CONTRACT, nor shall such obligation be deemed limited or discharged by the enumeration or procurement if any insurance for liability for damages imposed by law upon the CONSULTANT, Subconsultant or any municipality and/or public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, or for any consultants

working for the STATE. It is understood by the STATE and the CONSULTANT that the CONSULTANT'S Professional Liability/Errors and Omissions Policy required in the Article 13 -Insurance of this CONTRACT shall be utilized for claims involving the CONSULTANT'S professional negligence.

The CONSULTANT has the obligation, at its own expense, for the defense of any action or proceeding which may be brought against the parties specified in this Section. This obligation shall include the cost of attorney's fees, disbursements, costs and other expenses incurred in connection with such action or proceeding. Such obligation to indemnify in the foregoing paragraph does not extend to those suits, action, damages and costs of every name that arise out of this sole negligence of the STATE, or negligence of any municipality and/or public benefit corporation, railroad, or public utility whose property or facilities are affected by the contract work, or the negligence of any consultants working for the STATE, their agents or employees, relative to the construction, alteration, or repair or maintenance of a building, highway, or structure or appurtenances and appliances thereof including moving, demolition and excavating connected therewith. Notwithstanding the foregoing, the parties being defended by the CONSULTANT may elect to join any action or tender their own defense, at their sole expense and discretion.

## **ARTICLE 13 – INSURANCE**

The CONSULTANT shall procure, at its own sole cost an expense, and shall maintain in force at all times during the term of the CONTRACT including any extensions or renewals until satisfactory completion of all work under the CONTRACT, the policies of insurance covering all operations under the CONTRACT whether performed by it or its subconsultants as herein below set forth, written by companies authorized by the New York State Insurance Department to issue insurance in the State of New York and that have an A.M. Best Company rating of (A-) or better or approved by the DEPARTMENT. The DEPARTMENT may, at its sole discretion permit the placement of policies with a non-authorized carrier or carriers upon request by the CONSULTANT accompanied by the documentation required by 11 NYCRR §20.7 *et seq.*, provided that nothing herein shall be construed to require the DEPARTMENT to accept insurance placed with a non-authorized carrier under any circumstances. The CONSULTANT shall deliver to the DEPARTMENT evidence of such policies as the DEPARTMENT deems necessary to verify that the required insurance is in effect. If policies are changed or canceled, the CONSULTANT shall inform the STATE immediately. The STATE will determine whether to issue an order to the CONSULTANT to stop work.

1. **Conditions Applicable to Insurance.** All policies of insurance required by this CONTRACT must meet the following requirements:
  - A. **Coverage Types and Policy Limits.** The types of coverage and policy limits required from the CONSULTANT are specified in Section 2, Insurance Requirements, below. General Liability insurance shall apply separately on a per-job or per-project basis.
  - B. **Policy Forms.** Except as may otherwise specifically provided herein or agreed in writing by the DEPARTMENT, policies must be written on an **occurrence** basis. In the event that occurrence-based coverage is not commercially available, claims-made policy forms will be considered provided that, at a minimum, it includes provisions that allow for (a)

reporting circumstances or incidents that may give rise to future claims and (b) an extended reporting of not less than three (3) years with respect to events that occurred but were not reported during the term of the policy. ***Insurance policies that remove or restrict blanket contractual liability located in the “insured contract” definition (as stated in Section V, Number 9, Item f of the ISO-GLC policy) or that remove or modify the “insured contract” exception to the employers liability exclusion so as to limit coverage for claims that arise out of contract work, or that do not cover the additional insured for claims involving injury to employees of the named insured or subconsultants, are not acceptable.*** Policy forms must be provided to the DEPARTMENT upon request.

- C. Certificates of Insurance/Notices.** CONSULTANT shall provide a Certificate or Certificates of Insurance in a form satisfactory to the COMMISSIONER, before commencing any work under this CONTRACT. Certificates or transmittal correspondence shall reference the NYSDOT CONTRACT Number. CONSULTANT is strongly encouraged to transmit certificates and other materials concerning insurance coverage, reference the CONTRACT Number and the name of the CONSULTANT in the Subject Line, by email to: [Insur.consult.contr@dot.ny.gov](mailto:Insur.consult.contr@dot.ny.gov).

New York State Department of Transportation  
Office of Contract Management  
50 Wolf Rd, 6<sup>th</sup> Floor  
Albany, NY 12232

Unless otherwise agreed, policies shall be written so as to require that the policy will not be (a) canceled, (b) materially changed, or (c) permitted to expire or lapse for any reason except upon ten (10) calendar days prior written notice to the DEPARTMENT by Certified Mail, Return Receipt Requested at the address stated above. In addition, if required by the DEPARTMENT, the CONSULTANT shall deliver to the DEPARTMENT within ten (10) business days of such a request a copy of or any or all policies of insurance not previously provided, certified by the insurance carrier as true and complete. Certificates of Insurance shall:

1. Be in a form satisfactory to the DEPARTMENT. The ACORD 25 Certificate must be accompanied by an ACORD 855 “New York Construction Addendum” completed to indicate information about the liability insurance.
2. Be signed and dated by an authorized representative of the insurance carrier or producer.
3. Disclose any deductible, self-insured retention, aggregate limit.
4. Refer to this CONTRACT by number on the face of the certificate.

If at any time during the term of this CONTRACT, it shall come to the attention of the DEPARTMENT that required insurance is not in effect or that adequate proof of insurance has not been provided, the DEPARTMENT may, at its option:

1. Direct the CONSULTANT to suspend work and not to re-enter the premises with no additional payment or extension of time due on account thereof, or

2. May withhold further contract payments in accordance with Partial Payments, Section §109-04 of the Standard Specification, or
3. Treat such failure as a breach or default of the CONTRACT.

- D. Additional Insureds.** All insurance policies required by these specifications, except Workers' Compensation, NYS Disability and Professional Liability shall be endorsed to provide coverage to **"The State of New York/New York State Department of Transportation, any municipality in which the work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, and their agents or employees"** with respect to any claim arising from the CONSULTANT'S activities. The endorsement shall be affected by endorsement of the applicable policy using ISO form CG 20 10 11 85, CG 20 37 07 04, CG 20 33 07 98 when used in combination with CG 20 37 07 04, or CG 20 33 10 01 for a form(s) that provides equivalent coverage.
- E. Primary Coverage.** The liability and protective liability insurance policies shall provide primary and non-contributory coverage to the DEPARTMENT for any claim arising from the CONSULTANT'S work under this CONTRACT, or as a result of the CONSULTANT'S activities.
- F. Waiver of Subrogation.** As to every type and form of insurance coverage required from the CONSULTANT, there shall be no right of subrogation against **the State of New York/New York State Department of Transportation, its agents or employees**. To the extent that any of the CONSULTANT'S policies of insurance prohibit such a waiver of subrogation, CONSULTANT shall secure the necessary permission to make this waiver.
- G. Policy Renewal/Expiration.** At least ten (10) calendar days prior to the expiration of any policy required by this CONTRACT, evidence of renewal or replacement policies of such insurance with terms no less favorable to the DEPARTMENT than the expiring policies shall be delivered to the DEPARTMENT in the manner required for service of notice in Section C – Certificates of Insurance/Notices above.
- H. Self-Insurance Retention/Deductibles.** Consultants utilizing self-insurance programs are required to provide a description of the program for DEPARTMENT approval. Collateralized deductible and self-insured retention programs administered by a third party may be approved. Except as may be specifically provided in the CONTRACT documents of a particular project, the CONSULTANT or third-party administered insurance deductible shall be limited to the amount of the bid deposit of \$100,000, whichever is less. Security is not required if it is otherwise provided to an administrator or an approved risk management plan. The DEPARTMENT will not accept self-insured retention programs without security being posted to assure payment of both the self-insured retention limit and the cost of adjusting claims. The CONSULTANT shall be solely responsible for all claim expenses and loss payments within any permitted deductible or self-insured retention. If the CONSULTANT'S deductible in a self-administered program exceeds the amount of the bid deposit, the CONSULTANT shall

furnish an irrevocable Letter of Credit as collateral to guarantee its obligations. Such Letter of Credit or other collateral as may be approved by the DEPARTMENT must be issued by a guarantor or surety with an A.M. Best Company rating of (A-) or better. If, at any time during the term of this CONTRACT, the DEPARTMENT, in its sole discretion, determines that the CONSULTANT is not paying its deductible, it may require the CONSULTANT to collateralize all or any part of the deductible or self-insured retention or any or all policies of insurance or, upon failure to promptly do so, the same may be withheld from payments due the CONSULTANT.

- I. Waiver of Indemnities.** The CONSULTANT waives any right of action it and/or its insurance carrier might have against the DEPARTMENT (including its employees, officers, commissioners, or agents) for any loss that is covered by a policy of insurance that is required by this CONTRACT. The CONSULTANT waives any right of action it and/or its insurance carrier might have against the DEPARTMENT (including its employees, officers, commissioners, or agents) for any loss, whether or not such loss is insured.
  - J. Subconsultant's Liability Insurance.** In the event any portion of the work described in this CONTRACT is performed by an approved subconsultant, the insurance requirements of this Article shall be incorporated into the subcontract agreement. Subconsultant insurance requirements shall include the requirements for Workers' Compensation, NYS Disability Benefits, Commercial General Liability, and if applicable, Commercial Auto and/or Professional Liability. Excess or umbrella insurance is not required for subconsultants. CONSULTANT shall require that Certificates of Insurance, meeting the requirements of the DEPARTMENT are provided to the DEPARTMENT documenting the insurance coverage for each and every subconsultant employed by them to do work under this CONTRACT.
- 2. Insurance Requirements.** The types of insurance and minimum policy limits shall be as follows:
- a. Workers' Compensation and Disability Insurance.** As required by State Finance Law §142, the CONSULTANT shall maintain in force Workers' Compensation insurance upon forms required by or acceptable to the Workers' Compensation Board for all of CONSULTANT's employees. CONSULTANT shall also maintain disability insurance as required by the Disability Benefits Law of the State of New York.
  - b. Commercial General Liability Insurance.** The CONSULTANT shall maintain an occurrence form commercial general liability policy or policies insuring against liability arising from premises (including loss of use thereof), personal injury or death, advertising injury, liability insured under an insured contract (including tort liability of another assumed in a business contract) occurring on or in any way related to the premises of occasioned by reason of the operations of CONSULTANT. Such coverage shall be written on an ISO occurrence form (ISO Form CG 00 01 12 07 or a policy form providing equivalent coverage) in an amount of no less than \$1,000,000 per occurrence and not less than \$2,000,000 aggregate. Unless otherwise provided, the policy or policies of insurance providing the liability coverage shall include:

- i. Coverage for contractual liability by the CONSULTANT insured under an insured contract (including the tort liability of another assumed in a business contract).
  - ii. All insurance policies required by these specifications except Workers' Compensation, NYS Disability Benefits, and Professional Liability shall be endorsed to provide coverage to **"The State of New York/New York State Department of Transportation, any municipality in which the work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, and their agents or employees"** using ISO Form CG 20 10 11 85, CG 20 37 07 04, CG 20 33 07 98 when used in combination with CG 20 37 07 04, or CG 20 33 10 01 or a policy form or forms providing equivalent coverage.
  - iii. Products – completed Operations Coverage, as provided in the General Liability Policy, or in certain instance through ISO Form CG 26 11 09 99 or suitable equivalent.
  - iv. Where contract work will be performed by unregistered off-road equipment, CONSULTANT shall provide documentation of a blanket Pollution Liability Policy, or an endorsement to cover short-term pollution events, ISO Form CG 04 33 10 01 or equivalent.
  - v. Coverage for claims for bodily injury asserted by an employee of an additional insured and any Employer Liability Exclusion which may otherwise operate to exclude such coverage shall be voided in this respect.
  - vi. Explosion, Collapse and Underground Hazards Coverage ("XCU") for contracts that call for the performance of excavating, underground work, and/or the use of blasting equipment.
- c. Commercial Automobile Insurance including liability and required coverage for New York.** In the event that automobiles are used in connection with CONSULTANT'S business or operations with the DEPARTMENT, the CONSULTANT shall maintain a commercial or other automobile policy or policies insuring against liability for bodily injury, death, or damage to property and other mandatory coverages, relating to the use, operation, loading or unloading of any of CONSULTANT'S automobiles (including owned, hired and non-owned vehicles) on and around the project. This may be ISO Form CA 00 01 10 01, CA 00 01 01 87 or a policy form providing equivalent coverage along with mandatory New York endorsements. Coverage shall be in an amount of not less than \$1,000,000 each accident.
- d. Umbrella or Excess Liability Insurance.** The CONSULTANT shall maintain an occurrence form umbrella liability policy or policies insuring against liability arising from premises (including loss of use thereof), operations, independent consultants, project-completed operations, personal injury and advertising injury, and liability insured under an insured contract (including tort liability of another assumed in a business contract) occurring on or in any way related to the premises or occasioned by reason of the operations of CONSULTANT or arising from automobile liability as described above. Such coverage shall be written on an ISO Occurrence Form CU 00 01 12 07 or a policy form providing equivalent coverage. In the event that umbrella coverage is unavailable, equivalent excess coverage may be substituted. The minimum required

limits for the umbrella/excess coverage shall be sufficient to provide a total of not less than \$5,000,000 per occurrence/aggregate.

- e. **Consultant's Risks.** (*applicable to all contracts*) The CONSULTANT shall be responsible for obtaining any insurance it deems necessary to cover its own risks including without limitation: (1) business interpretation, such as gross earnings, extra expense, or similar coverage, (2) personal property, and/or (3) automobile physical damage and/or theft. In no event shall the DEPARTMENT be liable for any damage to, or loss, of personal property, or damage to, or loss of, an automobile that is covered by a policy of insurance that is required by this CONTRACT, even if such loss is caused by the negligence of the DEPARTMENT.

#### **ARTICLE 14 – INTERCHANGE OF DATA**

All technical data in regard to the PROJECT existing in the office of the STATE or existing in the offices of the CONSULTANT shall be made available to the other party to this CONTRACT without expense to such other party.

#### **ARTICLE 15 – DISPOSITION OF DATA**

At the time of completion of the work, the CONSULTANT shall make available to the STATE all documents and data pertaining to the work or to the PROJECT which materials at all times shall be the property of the STATE. It is agreed that the CONSULTANT may maintain copies of all documents and data. Or in the event that this CONTRACT is terminated for any reason, then, within ten (10) calendar days after such termination, the CONSULTANT shall make available to the STATE the aforementioned data and material.

#### **ARTICLE 16 – DAMAGES AND DELAYS**

The CONSULTANT agrees that no charges or claim for damages shall be made by them for any delays or hindrances from any cause whatsoever during the progress of any portion of the services specified in this CONTRACT. Such delays or hindrances, if any, shall be compensated for by extension of time for such reasonable period as the STATE may decide, it being understood however, that the permitting of the CONSULTANT to proceed to complete any services or any part of them after the date of completion or after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the STATE of any of its rights herein. Nothing in this ARTICLE will prevent the CONSULTANT from exercising its right under ARTICLE 9 of this CONTRACT.

#### **ARTICLE 17 – NOTICE OF BANKRUPTCY, VENUE, AUDITS**

If, prior to final audit, CONSULTANT files for relief pursuant to Title 11 of the United States Code under Bankruptcy Laws or a successor statute, this CONTRACT shall be treated as an executory contract under 11 USC §365 of the Bankruptcy Laws or successor statute, and subject to assumption or reject by the debtor within the time permitted by law.



The CONSULTANT must immediately send written notice to the Office of Contract Management of the New York State Department of Transportation at its main office in Albany, NY and send all relevant pleading of the voluntary or involuntary filing of a Bankruptcy proceeding by the CONSULTANT, its subsidiary, its principals and officers or a related entity whether or not the CONSULTANT believes that any debt is owed to the STATE by final audit or otherwise.

The determination of any rights under this CONTRACT shall be adjudicated in a State or Federal Court with jurisdiction over the matter, and venue for the determination of such rights shall be in Albany, NY.

The CONSULTANT agrees that the automatic stay under 11 USC S362 or a successor statute shall be deemed inapplicable or that this agreement shall constitute consent to the lifting of the stay with respect to the State's performance of or completion of any audit pursuant to the terms of this CONTRACT.

## **ARTICLE 18 – TERMINATION**

The STATE shall have the absolute right to terminate this CONTRACT, and such action shall in no event be deemed a breach of CONTRACT:

1. If a termination is brought about for the convenience of the STATE and not as a result of unsatisfactory performance on the part of the CONSULTANT, final payment shall be made based on the actual work performed by the CONSULTANT prior to termination, including, but not limited to, the number of hours and other authorized costs audited in accordance with the terms of the CONTRACT.
2. If the termination is brought about as a result of the unsatisfactory performance on the part of the CONSULTANT, the value of the work performed by the CONSULTANT prior to termination shall be established by the STATE.
3. The STATE reserves the right to terminate this CONTRACT in the event it is found that the certification filed by the CONSULTANT in accordance with the requirements contained in State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the STATE may exercise its termination right by providing written notification to the CONSULTANT in accordance with the written notification terms of the CONTRACT.

## **ARTICLE 19 – DEATH OR DISABILITY OF THE CONSULTANT**

In the case of death or disability of one or more but not all persons herein referred to as the CONSULTANT, the rights and duties of the CONSULTANT shall devolve upon the survivors of the CONSULTANT, who shall be obligated to perform the services required under this CONTRACT, and the STATE shall make all payments due to them.

In case of the death or disability of all persons herein referred to as CONSULTANT, all data and records pertaining to the PROJECT shall be delivered within sixty (60) calendar days to the STATE or their duly authorized representative. In case of the failure of the CONSULTANT's successors or personnel representatives to make such delivery on demand, then in that event the representatives of the CONSULTANT shall be liable to the state for any damages it may sustain

by reason thereof. Upon the delivery of all such data to the STATE, the STATE will pay to the representatives of the CONSULTANT all amounts due the CONSULTANT, including retained percentages to the date of death of the last survivor.

## **ARTICLE 20 – INDEPENDENT CONTRACTOR**

The CONSULTANT, in accordance with their status as an independent contractor, covenants and agrees that they will conduct themselves consistent with such status, that they will neither hold themselves out as, nor claim to be, an officer or employee of the STATE by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the STATE, including but not limited to, Workers' Compensation coverage, Unemployment Insurance Benefits, Social Security coverage or Retirement membership or credit.

## **ARTICLE 21 – COVENANT AGAINST CONTINGENT FEES**

The CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this Contract, and that they have not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this CONTRACT. For breach or violation of this warranty, the STATE shall have the right to annul this CONTRACT without liability, or, in its discretion, to deduct from the CONTRACT price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

## **ARTICLE 22 – TRANSFER OF AGREEMENT**

The CONSULTANT specifically agrees, as required by State Finance Law, Section 138, that they are prohibited by law from assigning, transferring, conveying, subletting or otherwise disposing of the CONTRACT or of their right, title or interest therein, or their power to execute such CONTRACT, to any other person, company or corporation, without the previous consent in writing of the STATE.

If this provision of the law be violated, the STATE shall revoke and annul the CONTRACT and the STATE shall be relieved from any and all liability and obligations thereunder to the person, company or corporation to whom the CONSULTANT shall assign, transfer, convey, sublet or otherwise dispose of the CONTRACT, except so much as may be required to pay his employees.

## **ARTICLE 23 – PROPRIETARY RIGHTS**

The CONSULTANT agrees that if copyrights, patentable discoveries or inventions or rights in data should result from work described herein, all rights accruing from such discoveries or inventions shall be the sole property of the CONSULTANT. However, the CONSULTANT agrees to and does hereby grant to the United States Government and the State of New York an irrevocable, nonexclusive, nontransferable paid-up license to reproduce, publish, make, use, and

sell each subject invention throughout the world and by and on behalf of the Government of the United States and States and domestic municipal governments, all in accordance with the provisions of 48 CFR 1-27, and other applicable Federal laws, rules and regulations.

#### **ARTICLE 24 – SUBCONTRACTORS/SUBCONSULTANTS**

The CONSULTANT may arrange for a portion(s) of its responsibilities under this CONTRACT to be subcontracted to qualified, responsible subconsultants/subcontractors, subject to approval of the STATE. If the CONSULTANT determines to subcontract a portion of the services, the subconsultants/subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under this CONTRACT must be fully explained by the CONSULTANT to the STATE. As part of this explanation, the subconsultant/subcontractor must submit to the STATE a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form, as required by the CONSULTANT prior to execution of this CONTRACT.

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of this CONTRACT including, but not limited to, the body of this CONTRACT, Appendix A – Standard Clauses for New York State Contracts, and the advertisement for proposals. Unless waived in writing by the STATE, all subcontracts between the CONSULTANT and subconsultants/subcontractors shall expressly name the STATE, through the DEPARTMENT, as the sole intended third party beneficiary of such subcontract. The STATE reserves the right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s), and this right shall not make the STATE a party to any subcontract or create any right, claim, or interest in the subconsultant/subcontractor or proposed subconsultant/subcontractor against the STATE.

The STATE reserves the right, at any time during the term of the CONTRACT, to verify that the written subcontract between the CONSULTANT and subconsultants/subcontractors is in compliance with all provisions of this Section and any subcontract provisions contained in this CONTRACT.

The CONSULTANT shall give the STATE immediate notice of writing of the initiation of any legal action or suit which relates in any way to a subcontract with a subconsultant/subcontractor or which may affect the performance of the CONSULTANT's duties under the CONTRACT. Any subcontract shall not relieve the CONSULTANT in any way of any responsibility, duty, and/or obligation of the CONTRACT.

If at any time during the performance under this CONTRACT total compensation to a subconsultant/subcontractor exceeds or is expected to exceed \$100,000, that subconsultant/subcontractor shall be required to submit and certify a Vendor Responsibility Questionnaire.

#### **ARTICLE 25 – CERTIFICATION REQUIRED BY 49CFR, PART 29**

The signator to this CONTRACT, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, its company, partner, director, officer, or major stockholder (five percent or more ownership):

1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
2. Has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past three (3) years;
3. Does not have a proposed debarment pending; and
4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

#### EXCEPTIONS

### **ARTICLE 26 – CERTIFICATION FOR FEDERAL-AID CONTRACTS**

The prospective participant certifies, by signing this Contract, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriate funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall completed and submit Standard Form LLL, “Disclosure Form to Report Lobbying” in accordance with its instructions.
3. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering this transaction imposed by Section 1342, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
4. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification shall be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

### **ARTICLE 27 – RESPONSIBILITY OF THE CONSULTANT**

The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all services furnished by the CONSULTANT under this CONTRACT. The CONSULTANT shall, without additional compensation, correct or revise any errors or

deficiencies in its services. However, the STATE may in certain circumstances, provide compensation for such work.

Neither the STATE's review, approval, or acceptance of, nor payment for, the services required under this CONTRACT shall be construed to operate as a waiver of any rights under this CONTRACT or of any case of action arising out of the performance of this CONTRACT, and the CONSULTANT shall be and remain liable to the STATE in accordance with applicable law for all damages to the STATE cause by the CONSULTANT's negligent performance or breach of contract of any of the services furnished under the CONTRACT.

The rights and remedies of the STATE provided for under this CONTRACT are in addition to any other rights and remedies provided by law.

If the CONSULTANT is comprised of more than one legal entity or any group of partners or joint ventures associated for the purposes of undertaking this CONTRACT, each such entity acknowledges and hereby affirmatively represents and agrees that each has the power to bind the CONSULTANT and each of the others hereunder, and as such, each acts both as principals and agent of the CONSULTANT and of each of the others hereunder. Each further acknowledges and agrees that all such entities, partners or joint ventures associated for the purposes of undertaking this CONTRACT shall be jointly and severally liable to third parties, including, but not limited to the STATE, for acts or omissions of the CONSULTANT, or any other entity, partner or joint venture hereunder.

If the CONSULTANT is comprised of more than one legal entity or any group of partners or joint ventures associated for the purposes of undertaking this CONTRACT, each such entity acknowledges and hereby affirmatively represents and agrees that the respective rights, duties and liabilities of each hereunder shall be governed by the laws of the State of New York, including, but not limited to the New York Partnership Law.

## **ARTICLE 28 – SECURITY AND CONFIDENTIALITY OF INFORMATION**

Information received as part of this CONTRACT shall be considered Confidential Information. The CONSULTANT warrants that it will take the appropriate steps as to its personnel, agents, officers, and any subcontractors/subconsultants regarding the obligations arising under this clause to insure such confidentiality. The CONSULTANT shall have written policies and/or business procedures in place which will protect Confidential Information from unauthorized disclosure, use, access, loss, alteration, or destruction. The CONSULTANT may disclose to other parties, as authorized by the NYSDOT Project Manager, or as described in the scope of services, only the information necessary to perform services under this CONTRACT. However, the CONSULTANT shall in no circumstance, communicate with the public or news media without prior authorization from the State's designee. Neither shall the CONSULTANT disclose information deemed confidential by the STATE nor shall the CONSULTANT disclose any other information obtained or developed in the performance of services under this CONTRACT without written authorization of the STATE. This warranty shall survive termination of this CONTRACT.

The CONSULTANT shall comply with the provisions of the New York State Information Security Breach and Notification Act, including General Business Law Section §89-aa and State Technology Law §208 as enacted by such Act or subsequently amended. In the event of an information security breach resulting in the unauthorized disclosure of personal information, the CONSULTANT shall be liable for the costs associated with such breach if caused by the CONSULTANT's negligence or willful acts or omissions, or the negligent or willful acts or omissions of the CONSULTANT's agents, officers, employees or subconsultants.

## **ARTICLE 29 – VENDOR RESPONSIBILITY**

The Department of Transportation has undertaken an affirmative review of the CONSULTANT's responsibility in accordance with the applicable standards outlined in Comptroller's "Guide to Financial Operations", and based upon such review, reasonable assurance that the CONSULTANT is responsible has been determined.

General Responsibility: The CONSULTANT shall, at all times during the CONTRACT, remain responsible. The CONSULTANT agrees, if requested by the Commissioner of NYSDOT (or his or her designee), to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organization and financial capacity.

Suspension of Work (for Non-Responsibility): The Commissioner of NYSDOT (or his or her designee) in his or her sole discretion, reserves the right to suspend any or all activities under this CONTRACT at any time when he or she discovers information that calls into question the responsibility of the CONSULTANT. In the event of such suspension, the CONSULTANT will be given written notice outlining the particulars of such suspension order. Upon issuance of such notice, the CONSULTANT shall comply with the terms of the suspension order. CONTRACT activity may resume at such time as the Commissioner of NYSDOT (or his or her designee) issues a written notice authorizing the resumption of performance under the CONTRACT.

Termination (for Non-Responsibility): Upon written notice to the CONSULTANT, and a reasonable opportunity to be heard with appropriate NYSDOT or staff, the CONTRACT may be terminated by the Commissioner of NYSDOT (or his or her designee) at the CONSULTANT's expense where the CONSULTANT is determined by the Commissioner of NYSDOT (or his or her designee) to be non-responsible. In such event, the Commissioner of NYSDOT (or his or her designee) may complete the contractual requirements in any manner he or she may deem advisable and pursue legal or equitable remedies for such breach.

## **ARTICLE 30 – NOTICES**

1. All notices permitted or required hereunder shall be in writing and shall be transmitted either:
  - a. Via certified or registered United States mail, return receipt requested;
  - b. By facsimile transmission;
  - c. By personal delivery;
  - d. By expedited delivery service; or
  - e. By email.

Such notices shall be addressed as follows or to such difference addresses as the parties may time-to-time designate:

**New York State Department of Transportation:**

**Contact Person's Name:** Matt Bromirski, Contract #C038061

**Title:** Deputy Assistant Commissioner, Office of Contract Management

**Address:** NYSDOT, Office of Contract Management, 50 Wolf Rd, 6<sup>th</sup> Floor, Albany, NY 12232

**Telephone Number:** (518) 457-2600

**Facsimile Number:** (518) 457-2875

**Email:** [Matt.Bromirski@dot.ny.gov](mailto:Matt.Bromirski@dot.ny.gov)

**Consultant's Name:** Enter Prime Consultant Name

**Contact Person's Name:**

**Title:**

**Address:**

**Telephone Number:**

**Facsimile Number:**

**Email:**

2. Any such notice shall be deemed to have been given either at the time of personal delivery, or, in the case of expedited delivery service or certified registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.
3. The parties may from time-to-time, specify any new or different address in the United States as their address for purpose of receiving notice under this CONTRACT by giving fifteen (15) calendar days' notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this CONTRACT.
4. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems, and/or for dispute resolution.

**ARTICLE 31 – TITLE VI ASSURANCE**

During the performance of this CONTRACT, the CONSULTANT, for itself, its assignees and successors in interest (hereinafter referred to as the "CONSULTANT") agrees as follows:

1. Compliance with Regulations: The CONSULTANT shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Regulations, Part 200 as they may be amended from time-to-time (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this CONTRACT.
2. Nondiscrimination: The CONSULTANT, with regard to the work performed by it during the CONTRACT, shall not discriminate on the grounds of race, color, or national origin, sex,

age, and disability/handicap in the selection and retention of subcontractors/subconsultants, including procurements or materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, Section 21.5 of the Regulations, including employment practices when the CONTRACT covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontractor/Subconsultants, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor/subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this CONTRACT and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
4. Information and Reports: The CONSULTANT shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to NYSDOT's Office of Diversity and Inclusion or FHWA, as appropriate, and shall set forth the efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this CONTRACT, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - a. Withholding of payments to the CONSULTANT under the CONTRACT until the CONSULTANT complies and/or
  - b. Cancellation, termination, or suspension of the CONTRACT in whole or in part.
6. Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The CONSULTANT shall take such action with respect to any subcontract or procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONSULTANT may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interest of the United States.

## **ARTICLE 32 – CONSULTANT DISCLOSURE LEGISLATION**

In accordance with Chapter 10 of the Laws of 2006, the CONSULTANT shall complete the "State Consultant Services Contractor's Annual Employment Report" (Form B), Exhibit    and submit copies to the Office of the State Comptroller, the Department of Civil Service, and the Department of Transportation on or before May 15<sup>th</sup> of each year the CONTRACT is in effect. The CONSULTANT shall provide information regarding all employees providing service under this CONTRACT, whether employed by the CONSULTANT or any subcontractor or



subconsultant. Form B will capture historical information, detailing actual employment data for the most recently completed State fiscal year (April 1<sup>st</sup> to March 31<sup>st</sup>). Annual employment reports should be submitted to the following three agencies. It is recommended, however, that consultants check the agency websites annually to confirm the address:

By Mail:

NYS Office of the State Comptroller  
Bureau of Contracts  
110 State Street, 11<sup>th</sup> Floor  
Albany, NY 12236  
ATT: Consultant Reporting

NYS Department of Civil Service  
Alfred E. Smith Building  
Albany, NY 12239  
ATT: Chapter 10 Counsel's Office

By Email:

NYS Department of Transportation  
Reports that are submitted to the NYS Department of Transportation must be submitted electronically, preferably as a Word, Excel, or PDF file via email to:  
[consultantdisclosure@dot.ny.gov](mailto:consultantdisclosure@dot.ny.gov).

### **ARTICLE 33 – ENSURING PAY EQUITY BY STATE CONSULTANTS/CONTRACTORS**

In accordance with Executive Order 162, issued on January 9, 2017, the CONSULTANT shall provide detailed workforce utilization reports of the CONSULTANT and each subconsultant/subcontractor that include, in addition to equal employment opportunity information, the job title and salary of each employee directly performing work on a STATE contract.

If the CONSULTANT cannot identify the individuals working directly on a STATE contract, then the CONSULTANT and each subconsultant/subcontractor shall provide such information of each employee in the CONSULTANT's entire workforce. Such information shall be reported to NYSDOT at quarterly intervals.

The reporting period shall be on a quarterly basis (January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31). The reporting requirement shall begin on the effective date of the CONTRACT and continue for the duration of the CONTRACT term. Reports shall be submitted within 15 calendar days from the end of each reporting period.

Detailed workforce utilization reports, as required above, shall be submitted in such form and in such manner as shall be required by NYSDOT and as in accordance with Consultant Instruction 17-02.

The CONSULTANT shall include this provision in every subcontract so that such provisions shall be binding upon each subconsultant/subcontractor, of the subcontract is in excess of \$25,000.

#### **ARTICLE 34 – CONFLICTS OF INTEREST**

The CONSULTANT has provided a form (Vendor Assurance of No Conflict of Interest or Detrimental Effect), signed by an authorized executive or legal representative attesting that the CONSULTANT's performance of the services does not and will not create a conflict of interest with, nor position the CONSULTANT to breach any other contract currently in force with the State of New York, that the CONSULTANT will not act in any manner that is detrimental to any STATE project on which the CONSULTANT is rendering services.

The CONSULTANT hereby affirms the attestations made in its proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the CONSULTANT's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this CONTRACT. The CONSULTANT shall have a duty to notify the STATE immediately of any actual or potential conflicts of interest.

In conjunction with any subcontract under this CONTRACT, the CONSULTANT shall obtain and deliver to the STATE, prior to entering a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the subconsultant/subcontractor. The CONSULTANT shall also require in any subcontracting agreement that the subconsultant/subcontractor, in conjunction with any further subconsulting agreement, obtain and deliver to the STATE a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its subconsultants/subcontractors prior to entering into a subcontract.

The STATE and the CONSULTANT recognize that conflicts may occur in the future because the CONSULTANT may have existing, or established new, relationships. The STATE will review the nature of any relationship and reserves the right to terminate this CONTRACT for any reason, or for cause, if, in the judgement of the STATE, a real or potential conflict of interest cannot be cured.

#### **ARTICLE 35 – ETHICS REQUIREMENTS**

The CONSULTANT and its subconsultants/subcontractors shall not engage any person who is, or has been at any time, in the employ of the STATE to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of STATE employees, and the rules, regulations, opinions, guidelines, or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively the "Ethics Requirements"). The CONSULTANT certifies that all of its employees and those of its subconsultants/subcontractors who are former employees of the STATE who are assigned to perform services under this CONTRACT shall be assigned in accordance with all Ethics Requirements. During the term, no person who is employed by the CONSULTANT or its

subconsultants/subcontractors and who is disqualified from providing services under this CONTRACT pursuant to any Ethics Requirements may share in any net revenues of the CONSULTANT or its subconsultants/subcontractors derived from this CONTRACT. The CONSULTANT shall identify and provide the STATE with notice of those employees of the CONSULTANT and its subconsultants/subcontractors who are former employees of the STATE that will be assigned to perform services under this CONTRACT, and make sure that such employees comply with all applicable laws and prohibitions. The STATE may request that the CONSULTANT provide it with whatever information the STATE deems appropriate about each such person's engagement, work cooperatively with the STATE to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the STATE, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The STATE shall have the right to withdraw or withhold approval of any subconsultant/subcontractor if utilizing such subconsultant/subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The STATE shall have the right to terminate this CONTRACT at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

**IN WITNESS WHEREOF**, this CONTRACT No. C038061 has been executed by the STATE, acting by and through the Commissioner of Transportation, and the CONSULTANT, by signature below, has duly executed this CONTRACT effective the date and year first above written.

In addition to the acceptance of this CONTRACT, the DEPARTMENT certifies that original copies of this signature page will be attached to all other exact copies of this CONTRACT.

RECOMMENDED BY:  
YORK

FOR THE PEOPLE OF THE STATE OF NEW YORK

\_\_\_\_\_  
Office of Contract Management  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Department of Transportation  
Date: \_\_\_\_\_

Consultant Certifications: I certify that all information with respect to the "Vendor Responsibility Questionnaire" submitted by (Consultant Firm Name) on \_\_\_\_ day of \_\_\_\_\_, 20\_\_ pursuant to the requirements set forth in OSC's Guide to Financial Operations is complete, true, and accurate. I additionally certify nothing has occurred since the date of that submission that would result in requiring a change or alteration to any of the answers provided on the "Vendor Responsibility Questionnaire" submitted that date.

In addition to the acceptance of this CONTRACT, I certify that all information provided to the STATE with respect to the requirements contained in State Finance Law Section §139-j & §139-k is complete, true, and accurate.

By: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
**FIRM**

---

Job Order Contracting (JOC) System Services for NYSDOT

ATTORNEY GENERAL

THOMAS P. DINAPOLI  
STATE COMPTROLLER

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## Acknowledgment for Contract #C038061

### For contracts signed in New York State

State of New York            )

County of                        ) ss.:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_, before me the undersigned personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

My Commission Expires:

### For contracts signed **outside** of New York State

State of                                )

County of                                ) ss.:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual(s) made such appearance before the undersigned in

\_\_\_\_\_ (insert the city or other political subdivision and the state or county or other place the acknowledgment was taken).

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
(Signature and office of individual taking acknowledgment)

My Commission Expires:

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

**PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.**

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### **STANDARD CLAUSES FOR NYS CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.



**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is

subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of

set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the

sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such

duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS).** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992 (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS).** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development			
Division	for	Small	Business

Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884  
email: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)–(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) ) require that they be denied



contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

**22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.**

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

**27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT.** Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

## APPENDIX A-1

### SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- (1) **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
- (4) **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOT's Office of Civil Rights or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - (a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
  - (b.) cancellation, termination or suspension of the contract, in whole or in part.

(6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract or procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **APPENDIX C**

### **SPECIAL EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS**

#### **Specific Equal Employment Opportunity Responsibilities**

**1. GENERAL** (a) Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity, as required by Federal Executive Order 11246, Federal Executive Order 11375, and NYS Executive Law Article 15, are set forth in required Contract Provisions (Form PR-1273 or 1316, as appropriate) and those Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid Highway Act of 1968. Non-discrimination and affirmative action are also required by the State Labor Law, Section 220-e, as amended, by Executive Order 162, issued on January 9, 2017 and the Regulations of the NYS Department of Transportation relative to federally-assisted programs (Title 49, Code of Federal Regulations, Part 21 and Section 21.5), including employment practices when the agreement covers a program set forth in Appendix B of the Regulations. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for projects activities under this contract.

(b) The CONSULTANT will work with the STATE and the Federal Government in carrying out equal employment opportunity obligations and in their review of their activities under this contract.

(c) The CONSULTANT and all their sub-consultants and/or sub-contractors holding sub-contracts of \$10,000 or more will comply with the following minimum specific requirements of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, Subsection 1 of the Federal-Aid Highway Program Manual, are applicable to contractors and sub-contractors.) The CONSULTANT will include these requirements in every sub-contract with such modification of language as is necessary to make them binding on the sub-contractor.

(d) The CONSULTANT and all their sub-consultants and/or subcontractors shall comply with Executive Order 162, issued on January 9, 2017, requiring quarterly workforce utilization reports, detailing reports of the Consultant and all of their subconsultants, which includes in addition to equal opportunity information, the job and salary of each employee directly performing work on a State contract.

#### **2. EQUAL EMPLOYMENT OPPORTUNITY POLICY**

A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the contract.

B. In performing the contract, the Consultant shall:

1. Ensure that each Consultant and subconsultant – or subcontractor – performing work on the contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

2. The Consultant shall submit an EEO policy statement to the New York State Department of Transportation (NYSDOT) after the date of the notice by the NYSDOT to award the contract to the Consultant as determined by the Department.
3. If the Consultant or any of its subconsultants, does not have an existing EEO policy statement, the NYSDOT may require the Consultant or subconsultant to adopt a model statement consistent with item B.4.a through d of this section.
4. The Consultant's EEO policy statement shall include the following language:
  - a. The Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its workforce.
  - b. The Consultant shall state in all solicitations or advertisements for employees that in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, natural origin, sex, age, disability or marital status.
  - c. The Consultant shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperation the implementation of the Consultant's obligation herein.
  - d. The Consultant will include provisions of Subdivisions (a) through (c) of this subsection 4 and the paragraph appearing immediately below which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subconsultant as to work in connection with the contract.

- e. The Consultant shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Consultant and its subconsultants shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction or prior arrest.

**3. EQUAL EMPLOYMENT OPPORTUNITY OFFICER** The CONSULTANT will designate and make known to the New York State Department of Transportation contracting officers an Equal Employment Opportunity Officer and a Minority Business Enterprise officer (hereinafter referred to as the EEO Officer and M.B.E. Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active equal employment opportunity program and who must be assigned adequate authority and responsibility to do so.

**4. DISSEMINATION OF POLICY** (a) All members of the CONSULTANT's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the CONSULTANT's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To insure that the above agreement will be met, the following actions will be taken as a minimum:

- (1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less than once every six months, at which time the CONSULTANT's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.
- (2) All new supervisory (first level of supervision and above) or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the CONSULTANT's equal employment opportunity obligations within thirty days following their reporting for duty with the CONSULTANT.
- (3) All personnel who are engaged in direct recruitment for the project will be instructed in the CONSULTANT's procedures for locating and hiring minority group employees by the EEO Officer or appropriate company official. (Minority group referred to herein shall mean Black, Hispanic, Asian/Pacific Islander, American Indian/Alaskan.)

(b) In order to make the CONSULTANT's equal employment opportunity policy known to all employees, prospective employees and potential sources or employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the CONSULTANT will take the following actions:

- (1) Notices and posters setting forth the CONSULTANT'S equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
- (2) The CONSULTANT's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

(c) In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a sub-contract, including procurements of materials or equipment, each potential sub-



contractor or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this agreement and the Regulations relative to non-discrimination.

**5. RECRUITMENT** (a) When advertising for employees, the CONSULTANT will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived. These advertisements shall state that all qualified applicants will be afforded equal employment opportunity without regard to race, religion, sex, color, national origin, age, disability or marital status.

(b) The CONSULTANT will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the CONSULTANT's EEO Officer will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the CONSULTANT for employment consideration. In the event the CONSULTANT has a valid bargaining agreement providing for exclusive hiring hall referrals, the CONSULTANT is expected to observe the provisions of that agreement to the extent that the system permits the CONSULTANT's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the CONSULTANT to do the same, such implementation violates Executive Order 11246.

(c) The CONSULTANT will encourage present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

**6. PERSONNEL ACTIONS** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age, disability or marital status. The following procedures shall be followed:

(a) The CONSULTANT will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

(b) The CONSULTANT will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory practices.

(c) The CONSULTANT will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the CONSULTANT will promptly take corrective action. If the review indicated that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

(d) The CONSULTANT will promptly investigate all complaints of alleged discrimination made in connection with obligations under this agreement, will attempt to resolve such complaints, and will take appropriate corrective action within 15 days. All subsequent corrective actions or decisions will also be documented and forwarded to the NYS Department of Transportation Compliance Officer within 7 days after such action has taken place. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the CONSULTANT will inform every complainant of the results and all of their avenues of appeal should the complaint be denied.

**7. TRAINING AND PROMOTION** (a) The CONSULTANT will assist in locating, qualifying and increasing the skills of minority group and women employees, and applicants for employment.

(b) Consistent with the CONSULTANT's work force requirements and as permissible under the Federal and State regulations, the CONSULTANT shall make full use of training programs; i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance. In the event the Training Special Provision is provided under this contract, this subparagraph is superseded thereby.

(c) The CONSULTANT will advise employees and applicants for employment of available training programs and entrance requirements for each.

(d) The CONSULTANT will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

**8. UNIONS** If the CONSULTANT relies in whole or in part upon unions as a source of employees, the CONSULTANT will use their best effort to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and, to effect referrals by such unions of minority and female employees. The CONSULTANT will send to each labor union or representative of workers with which he has or is bound by a collective bargaining or other agreement or understanding, a notice to be provided by the State Division of Human Rights, advising such labor union or representative of the CONSULTANT's compliance and with the non-discrimination clauses. Actions by the CONSULTANT, either directly or through a CONSULTANT's association acting as agent, will include the procedures set forth below:

(a) The CONSULTANT will use their best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions

and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

(b) The CONSULTANT will use their best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age, disability or marital status.

(c) The CONSULTANT is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union, and such labor union refuses to furnish such information to the CONSULTANT. The CONSULTANT shall so certify to the STATE and shall set forth what efforts have been made to obtain such information. Further, if the CONSULTANT was directed to do so by the contracting agency as part of the bid or negotiations of this contract, the CONSULTANT shall request such labor union or representative to furnish him with a written statement that such labor union or representative accepts the non-discrimination clauses and will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment, employment and the terms and conditions of employment under this contract shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the CONSULTANT shall promptly notify the State Division of Human Rights and set forth what efforts have been made to obtain such information.

(d) In the event the union is unable to provide the CONSULTANT with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the CONSULTANT will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age, disability or marital status, making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the CONSULTANT has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents

the CONSULTANT from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such CONSULTANT shall immediately notify the New York State Department of Transportation.

**9. AFFIRMATIVE ACTION IN SUBCONTRACTING** (a) The CONSULTANT will not discriminate on the grounds of race, religion, sex, color, national origin, age, disability or marital status in the selection of subcontractors, including procurements and leases of equipment.

(b) If the CONSULTANT determines to use a subcontractor as part of this agreement, affirmative action shall be taken to increase the participation of minority business firms in that work. As part of that affirmative action, the CONSULTANT will identify and contact minority business firms and solicit proposals for the work to be subcontracted. The STATE will provide a list of names of minority business firms to the CONSULTANT. Another source that should be contacted for a list of minority business firms is the Governor's Office of Minority & Women's Business Development (GOMWBD).

(c) The CONSULTANT will document the affirmative action steps taken to comply with paragraph 9b. Such documentation will be provided at the time or submittal of a formal proposal to the State's Contracts Bureau.

(d) By execution of this agreement, the CONSULTANT certifies that the affirmative action steps in 9a, 9b & 9c above were taken when soliciting proposals for the work in this agreement indicated to be subcontracted and that these steps will be taken should any work be subcontracted in the future.

(e) The CONSULTANT will insure binding subcontractor and vendor compliance with their EEO obligations. The CONSULTANT will take such actions in enforcing such provisions of such subcontract or purchase order as the contracting agency may direct, including sanctions or remedies for non-compliance. If the CONSULTANT becomes involved in or is threatened with litigation with a subcontractor or a vendor as a result of such direction by the contracting agency, the CONSULTANT shall promptly so notify the Attorney General, requesting him to intervene and protect the interest of the State of New York.

**10. RECORDS AND REPORTS** (a) The CONSULTANT will keep such records as are necessary to determine compliance with the CONSULTANT's equal employment opportunity obligations. The records kept by the CONSULTANT will be designed to indicate:

- (1) The number of minority and non-minority group members and women employed in each work classification on the project, where required by the NYS D.O.T Compliance Officer.
- (2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to CONSULTANTS who rely in whole or in part on unions as a source of their work force).
- (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees.
- (4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.
- (5) Compliance with all other requirements in these provisions such as meetings, instructions, employment efforts, etc.

(b) The CONSULTANT will comply with Sections 291-299 of the Executive Law and Civil Rights Law and will provide all information and reports required by the Regulations, or orders and instructions issued pursuant

thereto, and will permit access to its books, records, accounts other sources of information, and its facilities as may be determined by State or Federal officials to be pertinent to ascertain compliance with such Regulations, orders and instructions. All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the State and the Federal Highway Administration.

(c) Failure to comply with these Special EEO Provisions may be considered unsatisfactory performance and may subject the agreement to termination under the termination article of this agreement. Non-compliance may result in the CONSULTANT's being declared ineligible for future agreements made by or on behalf of the STATE or a public authority or agency of the STATE, until he satisfies the State Commissioner of Human Rights that he has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Commissioner of Human Rights after conciliation efforts by the State Division of Human Rights have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the State Division of Human Rights, notice thereof has been given to the CONSULTANT and an opportunity has been afforded them to be heard publicly before the State Commissioner of Human Rights or official designee. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided for by law. These may include, but are not limited to:

- (1) withholding of payments to the CONSULTANT under the agreement until the CONSULTANT complies, and/or
- (2) cancellation, termination or suspensions of the agreement in whole or in part.

**11. TRAINING SPECIAL PROVISIONS** This Training Special Provision supersedes paragraph 7.b above and is in implementation of 23 CFR Subpart A, Section 230.111 & Executive Order 11246.

As part of the CONSULTANT's equal employment opportunity affirmative action program training shall be provided as follows:

The CONSULTANT shall provide on-the-job training aimed at developing full competence in the job classification involved.

The number of months of training to be provided under these special provisions is previously stated in Article II.

In the event that the CONSULTANT subcontracts a portion of the contract work, it shall be determined how many, if any, of the trainees are to be trained by the subcontractor, provided however, that the CONSULTANT shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The CONSULTANT shall also insure that this training special provision is made applicable to such subcontract.

The number of trainees shall be distributed among the work classifications on the basis of the CONSULTANT's needs. Along with their proposal, the CONSULTANT shall submit to the New York State Department of Transportation for approval the proposed number of trainees to be trained in each selected classification, their estimated salaries and a training schedule. The salaries to be paid trainees shall not be less than 75 percent of the average hourly rate approved in the agreement for the classification to be trained. During the period from the beginning of the project to its completion, the trainee shall receive reasonable salary increases commensurate to the abilities and effort exerted by the trainee. The training schedule required should indicate the start of work and appropriate incremental salary steps in accord with the above.

Training and upgrading the proficiency of minorities and women is a primary objective of this Training Special Provision. Accordingly, the CONSULTANT shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The CONSULTANT will be responsible for demonstrating the steps that have been taken in pursuance thereof, prior to a determination as to whether the CONSULTANT is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee in any classification in which they have successfully completed a training program or in a classification in which they have been employed. The CONSULTANT should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the CONSULTANT's records should document the findings in each case.

The minimum length and type of training for each classification will be as established in the training schedule developed by the CONSULTANT and approved by the State and Federal Highway Administration. The State and the Federal Highway Administration shall approve a program if it reasonably calculated to meet the equal employment opportunity obligations of the CONSULTANT and to assist in qualifying the average trainee toward proficiency in the classification concerned by the end of the training period. Approval of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. Training is permissible in lower level management positions. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

The CONSULTANT will be reimbursed for the cost of any and all training under the payment terms of this agreement. This can include offsite training cost as discussed above. All offsite training must be defined in the training schedule. All costs claimed or calculated for training must be directly related to the work defined in the scope of this agreement and/or added by supplemental agreement.

The CONSULTANT must demonstrate their best efforts and evidence good faith in hiring trainees for positions in the classification in which they have completed training.

The CONSULTANT shall furnish the trainee a copy of the program they will follow in the training. The CONSULTANT shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

The CONSULTANT will provide for the maintenance of records and furnish periodic reports documenting their performance under this Training Special Provision.

Updated July 2017

**APPENDIX D**  
**PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES:**  
**REQUIREMENTS AND PROCEDURES**

(revised State 7-12-2017)

**I. General Provisions**

- A. The New York State Department of Transportation (NYSDOT) is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (NYCRR) for all State contracts, as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The consultant to the subject contract (the “Consultant” and the “Contract” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to NYSSDOT, to fully comply and cooperate with NYSDOT in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (EEO), and contracting opportunities for New York State-certified Minority and Women-Owned Business Enterprises (MWBEs). The Consultant’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) and other applicable federal, state, and local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section VII of this Appendix C and such other remedies are available to NYSDOT pursuant to the Contract and applicable law.

**II. MWBE Utilization Plan**

- A. The Consultant represents and warrants that the Consultant has submitted an MWBE Utilization Plan, or shall submit a MWBE Utilization Plan at such time as shall be required by NYSDOT. The MWBE Utilization Plan is to be submitted consistent with the requirements stated in the procurement document.
- B. The Consultant agrees to adhere to such MWBE Utilization Plan in the performance of the Contract.
- C. The Consultant further agrees that failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such material breach, NYSDOT shall be entitled to any remedy provided herein, including but not limited to, a finding that the Consultant is non-responsive.

**III. Waivers Post Contract Execution**

- A. If the Consultant, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the Consultant may submit a request for a waiver to the NYSDOT Office of Contract Management, Civil Rights Unit. Such waiver request must be supported by evidence of the Consultant’s good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, NYSDOT shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.
- B. If NYSDOT, upon review of the MWBE Utilization Plan, quarterly MWBE Contractor Compliance Reports described in Section VI, or any other relevant information, determines that the Consultant is failing or refusing to comply with the MWBE Contract Goals, and no waiver has been issued in regards to such non-compliance, NYSDOT may issue a notice of deficiency



to the Consultant. The Consultant must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of the MWBE Contract Goals.

**IV. Liquidated Damages – MWBE Participation**

- A. Where NYSDOT determines that the Consultant is not in compliance with the requirements of this Appendix and the Consultant refuses to comply with such requirements, or if the Consultant is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Consultant shall be obligated to pay to NYSDOT liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
  - 1. All sums identified for payment to the MWBEs had the Consultant achieved the contractual MWBE goals; and
  - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by NYSDOT, the Consultant shall pay such liquidated damages to NYSDOT within sixty (60) days after they are assessed. Provided, however, that if the Consultant has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Consultant following the complaint process.

## **APPENDIX E**

### **INFORMATION TECHNOLOGY INFRASTRUCTURE REQUIREMENTS**

1. **PROTECTION OF DATA , INFRASTRUCTURE AND SOFTWARE**
  - 1.1 Consultant is responsible for providing physical and logical security for all Data, infrastructure (e.g. hardware, networking components, physical devices), and software related to the services the Consultant is providing under this Agreement.
  - 1.2 All Data security provisions agreed to by the Consultant within this Agreement may not be diminished for the duration of this Agreement. No reduction in these conditions in any fashion may occur at any time without prior written agreement by the parties amending this Agreement.
2. **SECURITY POLICIES AND NOTIFICATIONS**
  - 2.1 State Security Policies and Procedures: The Consultant and its personnel shall review and implement all State security policies, procedures and directives currently existing or implemented during the term of this Agreement, including ITS Policy NYS-P03-002 Information Security Policy (or successor policy(ies)) .
  - 2.2 Security Incidents: Consultant shall address any Security Incidents in the manner prescribed in ITS Policy NYS-P03-002 Information Security Policy (or successor policy(ies)), including the New York State Cyber Incident Reporting Procedures incorporated therein or in such successor policy(ies) .
3. **DATA BREACH - REQUIRED CONSULTANT ACTIONS**
  - 3.1 Unless otherwise provided by law, in the event of a Data Breach, the Consultant shall:
    - 3.1.1 notify the NYSDOT Project Coordinator or their designated contact person(s), by telephone as soon as possible, but in no event more than four (4) hours from the time the Consultant has knowledge of a Data Breach;
    - 3.1.2 consult with and receive authorization from the NYSDOT Project Coordinator as to the content of any notice to affected parties prior to notifying any affected parties to whom notice of the Data Breach is required, either by statute or by NYSDOT;
    - 3.1.3 coordinate all communication regarding the Data Breach with the NYSDOT Project Coordinator
    - 3.1.4 cooperate with the NYSDOT Project Coordinator in attempting (a) to determine the scope and cause of the breach; and (b) to prevent the future recurrence of such security breaches; and
    - 3.1.5 take corrective action in the timeframe required by the NYSDOT Project Coordinator. If Consultant is unable complete the corrective action within the required timeframe, the NYSDOT Project Coordinator may contract with a third party to provide the required services until corrective actions and services resume in a manner acceptable to NYSDOT, or until NYSDOT has completed a new

procurement for a replacement service system . The Consultant will be responsible for the cost of these services during this period.

3.2 Nothing herein shall in any way (a) impair the authority of the Office of the Attorney General (“OAG”) to bring an action against Consultant to enforce the provisions of the New York State Information Security Breach Notification Act (ISBNA) or (b) limit Consultant's liability for any violations of the ISBNA or any other applicable statutes, rules or regulations.

#### 4. DATA OWNERSHIP, ACCESS AND LOCATION

4.1 Data Ownership: NYSDOT shall own all right, title and interest in Data.

4.2 Access to Data:

4.2.1 NYSDOT shall have access to its Data at all times, through the term of the Agreement.

4.2.2 NYSDOT shall have the ability to import or export Data in piecemeal or in its entirety at NYSDOT’s discretion, without interference from the Consultant.

4.3 Consultant Access to Data: The Consultant shall not copy or transfer Data unless authorized by NYSDOT. In such an event the Data shall be copied and/or transferred in accordance with the provisions of this Section. Consultant shall not access any Data for any purpose other than fulfilling the service. Consultant is prohibited from Data Mining, cross tabulating, monitoring NYSDOT’s Data usage and/or access, or performing any other Data Analytics other than those required within the Contract. At no time shall any Data or processes (e.g. workflow , applications, etc.), which either are owned or used by NYSDOT be copied, disclosed , or retained by the Consultant or any party related to the Consultant. The Consultant is allowed to perform industry standard back-ups of Data. Documentation of back-up must

- 4.4 be provided to NYSDOT upon request. Consultant must comply with any and all security requirements within the Contract.
- 4.5 Data Location and Related Restrictions: All Data shall remain within the Continental United States (CONUS). Any Data stored, or acted upon, must be located solely in Data Centers in CONUS. Services which directly or indirectly access Data may only be performed from locations within CONUS. All Data in transit must be handled in accordance with FIPS- 140-2 or TLS1, or TLS2 (or successor).
- 4.5.1 Support Services: All helpdesk, online, and support services which access any Data must be performed from within CONUS. At no time will any Follow the Sun support be allowed to access Data directly, or indirectly, from outside CONUS.
5. CONSULTANT PORTABLE DEVICES
- 5.1 Consultant shall not place Data on any portable Device unless Device is located and remains within Consultant's CONUS Data Center.
- 5.2 The Data, and/or the storage medium containing the Data, shall be destroyed in accordance with applicable ITS destruction policies (ITS Policy S13-003 Sanitization/Secure Disposal and S14-003 Information Security Controls or successor) when the Consultant is no longer contractually required to store the Data.
6. TRANSFERRING OF DATA
- 6.1 General: The Consultant will not transfer Data unless directed to do so in writing by NYSDOT.
- 6.2 Transfer of Data at end of the Agreement: At the end of the Agreement, Consultant may be required to transfer Data to a new Consultant. This transfer must be carried out as specified by NYSDOT in the Agreement. This transfer may include, but is not limited to, conversion of all Data into or from an industry standard format(s) including comma/delimited files, txt files, or Microsoft standard file formats.
- 6.3 Transfer of Data; Charges: Transfer of Data shall be done at no additional charge to NYSDOT, except for the cost detailed for Task 11 in Attachment 8.
- 6.4 Transfer of Data; Contract Breach or Termination: In the case of Contract breach or termination for cause of the Contract, all expenses for the transfer of Data shall be the responsibility of the Consultant.
7. ENCRYPTION
- 7.1 All Data must be encrypted at all times unless specifically authorized by the NYSDOT Project Coordinator. At a minimum, encryption must be carried out at the most current NYS Encryption Standard (NYS-S14-007), (or successor policy(ies) with key access restricted to NYSDOT only, unless with the express written permission of NYSDOT.
8. REQUESTS FOR DATA BY THIRD PARTIES
- 8.1 Unless prohibited by law, Consultant shall notify the NYSDOT Project Coordinator in writing within 24 hours of any request for Data (including requestor, nature of Data requested and timeframe of response) by a person or entity other than NYSDOT, and the

Consultant shall secure Written acknowledgement of such notification from the NYSDOT Project Coordinator before responding to the request for Data.

8.2 Unless compelled by law, the Consultant shall not release Data without NYSDOT's prior written approval.

9. SECURITY PROCESSES

9.1 Consultant shall cooperate with all reasonable NYSDOT requests for a written description of Consultant's physical/virtual security and/or internal control processes. NYSDOT shall have the right to terminate this Agreement when such a request has been denied.

10. UPGRADES, SYSTEM CHANGES AND MAINTENANCE/SUPPORT

10.1 The Consultant shall give a minimum of five (5) business days advance written notice to the designated NYSDOT Project Coordinator of any upgrades or system changes that will impact services as provided in this Agreement.

11. EXPIRATION , TERMINATION OR SUSPENSION OF SERVICES

11.1 Return of Data: The Consultant shall return Data in a format agreed upon within the Contract or as agreed to with the NYSDOT Project Coordinator. The Consultant must certify all Data has been removed from its system and removed from backups within timeframes established in the Contract or as agreed to with the NYSDOT Project Coordinator.

11.2 Suspension of Services: During any period of suspension of service, NYSDOT shall have full access to all Data at no charge. The Consultant shall not take any action to erase and/or withhold any NYSDOT Data, except as directed by the NYSDOT Project Coordinator.

11.3

11.4 Expiration or Termination of Services: Upon expiration or termination of the Agreement, NYSDOT shall have full access to all Data for a period of 60 calendar days at no charge. During this period, the Consultant shall not take any action to erase and/or withhold any Data, except as directed by the NYSDOT Project Coordinator.

12. SECURE DATA DISPOSAL

12.1 When requested by the NYSDOT Project Coordinator, the Consultant shall destroy Data in all of its forms, including all back-ups. Data shall be permanently deleted and shall not be recoverable, according ITS Policy S13-003 Sanitization/Secure Disposal or successor and S14-003 Information Security Controls or successor. Certificates of Destruction, in a form acceptable to NYSDOT, shall be provided by the Consultant to the NYSDOT Project Coordinator.

13. ACCESS TO SECURITY LOGS AND REPORTS

13.1 Upon request, the Consultant shall provide reports to NYSDOT in a format as specified in the Contract.

14. CONSULTANT PERFORMANCE AUDIT

14.1 The Consultant shall allow NYSDOT to assess Consultant's performance by providing any materials requested in the Contract (e.g., page load times, response times, uptime, fail over time). NYSDOT may perform this Consultant performance audit with a third party at its discretion.

14.2 The Consultant shall perform an independent audit of their Data Centers, at least annually, at Consultant expense. The Consultant will provide a full version of the audit report upon request by NYSDOT. The Consultant shall identify any confidential, trade secret, or proprietary information in accordance with Freedom of Information Law ("FOIL"), Article 6 of the Public Officers Law.

14.3 The Office of the State Comptroller reserves its right conduct an audit of the Consultant.

15. PERSONNEL

15.1 Background Checks: NYSDOT may require the Consultant to conduct background checks on certain Consultant staff at no charge to NYSDOT.

15.2 Separation of Duties: NYSDOT may require the separation of job duties, and limit staff knowledge of Data to that which is absolutely needed to perform job duties.

16. BUSINESS CONTINUITY/DISASTER RECOVERY (BC/DR) OPERATIONS

16.1 The Consultant shall provide a business continuity and disaster recovery plan to the NYSDOT Project Coordinator within 30 days of receiving the Notice to Proceed.

17. COMPLIANCE WITH FEDERAL , STATE AND LOCAL REGULATIONS

17.1 If required, Consultant will provide verification of compliance with specific Federal, State and local regulations, laws and IT standards that NYSDOT is required to comply with.

18. AUTHENTICATION TOKENS

18.1 NYSDOT may require authentication tokens for all systems. For more details, please see NYS ITS Policy S14-006 Authentication Tokens Standard or successor.

19. MODIFICATION TO CLOUD SERVICE DELIVERY TYPE AND DESCRIPTION  
WITHIN AN AUTHORIZED USER AGREEMENT

19.1 As Cloud services can be flexible and dynamic, delivery mechanisms may be subject to change. NYSDOT requires notification of any such changes to ensure security and business needs are met.

19.2 Any changes to the description, type of service(s), or SKU (e.g., PaaS to IaaS) must be provided to NYSDOT.

19.3 In addition, notification must be provided to the NYSDOT Project Coordinator for review and acceptance, prior to implementation. Any changes to the Agreement will require NYSDOT to re-assess the risk mitigation methodologies and strategies and revise the Agreement as needed.

December 2015

EXHIBIT \_\_\_\_  
CDL FORM B

**FORM B**

**OSC Use Only:**

Reporting Code:  
Category Code:

**State Consultant Services  
Contractor's Annual Employment Report  
Report Period: April 1, to March 31,**

Contracting State Agency Name: Transportation Agency Code: 17000  
Contract Number:  
Contract Term to  
Contractor Name:  
Contractor Address:  
Description of Services Being Provided:

**Scope of Contract (Choose one that best fits):**

Analysis ☐ Evaluation ☐ Research ☐ Training ☐  
Data Processing ☐ Computer Programming ☐ Other IT consulting ☐  
Engineering ☐ Architect Services ☐ Surveying ☐ Environmental Services ☐  
Health Services ☐ Mental Health Services ☐  
Accounting ☐ Auditing ☐ Paralegal ☐ Legal ☐ Other Consulting ☒

O*NET Employment Category Number and O*NET Job Title	Number of Employees	Number of Hours Worked	Amount Payable Under the Contract
Total this page	0	0	\$ 0.00
Grand Total			



Name of person who prepared this report:

Preparer's Signature: \_\_\_\_\_

Title:

Phone #:

Date Prepared:     /     /

## **Attachment 2: Consultant Information and Certification**

**Contract Number(s): C038061**

**Project Title: Job Order Contracting (JOC) System Services for NYSDOT**

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### **i. Consultant Information**

Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_-\_\_\_\_\_ Fax Number: (\_\_\_\_) \_\_\_\_\_-\_\_\_\_\_

Email Address: \_\_\_\_\_

Contact Person Name: \_\_\_\_\_ Title: \_\_\_\_\_

Consultant's Federal Identification Number (FEIN): \_\_\_\_\_

Consultant's NYSDOT Consultant Identification Number: \_\_\_\_\_

Please indicate below the name, title, address and telephone/fax numbers of the person who prepared this Proposal, as well as any other individual(s) with authority to negotiate and contractually bind the Proposer.

Preparer's Name, Title:

\_\_\_\_\_

Address: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_-\_\_\_\_\_ Fax Number: (\_\_\_\_) \_\_\_\_\_-\_\_\_\_\_

Email Address: \_\_\_\_\_

Other Authorized Individual(s):

Name, Title \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ Email Address: \_\_\_\_\_

**ii. Proposer Certifications**

By signing below, I, \_\_\_\_\_, authorized individual  
of

(Name)

\_\_\_\_\_, make the following certifications regarding the  
(Proposer Name)  
**subject Proposal:**

- 365-Day Offer: This Proposal is a firm offer for a 365-day period from the date of submission.
- The Proposer has read and will follow the procedure outlined in Section 7.3 of the RFP if it proposes the services of a former NYSDOT employee(s).
- ST-220: If selected for contract award greater than \$100,000, the Proposer will complete and submit the required ST-220-CA and ST-220-TD (Contractor Certifications) with the contract documents.
- No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the federal contract, grant loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL – “Disclosure Form to Report Lobbying” in accordance with its instructions.
- As of January 1, 2019, bidders on New York State procurements subject to competitive bidding are required to submit a Certification on Sexual Harassment in bids. By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace, and provides annual sexual harassment prevention training to all its employees. Such policy shall, at a minimum, meet the requirements of Section 201-g of the Labor Law.
- The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants,

and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

*This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C §1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certifications shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.*

*The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provision of 31 U.S.C. Section 3801, et seq., are applicable thereto.*

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Name, Title:** \_\_\_\_\_

**iii. Acceptance of Contract**

By signing below, I, \_\_\_\_\_, authorized individual of  
(Name)

\_\_\_\_\_, hereby **certify that I have read and Accept**  
all

(Proposer Name)

terms and conditions contained in the Draft Contract, including Appendix A, which is included as Attachment 1 to this Request for Proposals.

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Name, Title:** \_\_\_\_\_

### Attachment 3: Form AOR Acknowledgement of Receipt

#### Acknowledgment of Receipt of RFP Modifications and Questions & Answers

<b>NAME OF PROPOSER:</b>

I hereby acknowledge receipt of the Job Order Contracting (JOC) System Services for NYSDOT, Contract No. C038061 Request for Proposals, dated Month DD, YYYY and subsequent responses to Modifications and Questions & Answers issued by the Department, as listed below.

MODIFICATION NUMBER	DATE ISSUED BY THE DEPARTMENT

QUESTION & ANSWER NUMBER	DATE ISSUED BY THE DEPARTMENT

NAME	
TITLE	
SIGNATURE	
DATE	

#### **Attachment 4: Procurement Lobbying Law Compliance**

1. Required Forms: The Proposer shall complete the following forms and include them in Part II: Cost and Administrative Proposal/Submittal.

- Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j(3) and §139-j(6)(b)

[https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/offers\\_affirmation\\_and\\_agreement\\_form.pdf](https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/offers_affirmation_and_agreement_form.pdf)

- Offerer Disclosure of Prior Non-Responsibility Determinations

[https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/offer\\_disclos\\_prior\\_non.pdf](https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/offer_disclos_prior_non.pdf)

2. NYSDOT Guidelines and Procedures

Under the requirements of the State Procurement Act all communications regarding advertised projects are to be channeled through the Office of Contract Management (\*Designated Contacts). Until a designation is made, communication with any other NYSDOT employee concerning this project that is determined to be an attempt to influence the procurement may result in disqualification.

Refer to "NYSDOT PROCUREMENT LOBBYING LAW GUIDELINES AND PROCEDURES" at [https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/pll\\_gandp\\_v1.pdf](https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/pll_gandp_v1.pdf)

3. Summary of the policy and prohibitions regarding permissible contacts

a. Contacts Prior to Designation

Any communication involving an attempt to influence the procurement are only permitted with the following Designated Contact Persons

- The Designated Office of Contract Management Specialist
- The Office of Contract Management Specialist Supervisor
- The Office of Contract Management Assistant Director
- The Office of Contract Management Director

There are some communications exempted from this restriction:

- Participation in a pre-proposal conference
- Protests, complaints of improper conduct or misrepresentation

If any other NYSDOT employee is contacted and they believe a reasonable person would infer that the communication was intended to influence the procurement, the contact must be reported by the NYSDOT employee. If the Department determines an impermissible contact was made, the offerer cannot be awarded the contract. A second violation would lead to a four-year bar on the award of public contracts to the offerer.

b. Contacts After Designation

NYSDOT identifies the primary contract negotiations contacts, which include:

- The Designation Office of Contract Management Specialist
- The Office of Contract Management Specialist Supervisor
- The Office of Contract Management Assistant Director
- The Office of Contract Management Director
- The Program Area Project Manager
- The Program Area Project Manager's Immediate Supervisor

The law does not limit who may be contacted during the negotiation process. However, if any NYSDOT employee is contacted and they believe a reasonable person would infer that the communication was intended to influence the procurement, the contact must be reported by the NYSDOT employee.

- c. Information required from offerers that contact NYSDOT staff, prior to contract approval by the Office of the State Comptroller.

The individuals contacting NYSDOT should refer and shall be prepared to provide the following information, either by email or fax as directed by NYSDOT:

Person's name, firm person works for, address of employer, telephone number, occupation, firm they are representing, and whether the owner, employee, retained by or designated by the firm to appear before or contact NYSDOT.

- d. Applicability to an executed contract:

Restrictions similar to those described above apply to approval or denial of an assignment, amendment (other than amendments that are authorized and payable under the terms of the procurement contract as it was finally awarded or approved by the comptroller, as applicable), renewal or extension of a procurement or contract, or any other material change in the procurement contract resulting in a financial benefit to the offerer. The staff noted above as well as the project manager and consultant manager are considered designated contact persons. The Department may identify other contact persons for each of these processes.

4. Rules and regulations and more information on this law, please visit:

<https://online.ogs.ny.gov/legal/lobbyinglawfaq/default.aspx>

For more information go to the NYSDOT's website at: <http://www.dot.ny.gov> or contact:

Shalina Mallory

NYSDOT Office of Contract Management

50 Wolf Rd, 6<sup>th</sup> Floor

Albany, NY 12232

Telephone: (518) 457-2600

Email: [Shalina.Mallory@dot.ny.gov](mailto:Shalina.Mallory@dot.ny.gov)

#### **Attachment 5: Consultant Disclosure Legislation Forms A&B**

**OSC Use Only:**

Reporting Code:

Category Code:

Date Contract  
Approved:

**FORM  
A**

State Consultant Services – Contractor's Planned Employment  
From Contract Start Date Through The End Of The Contract Term

State Agency Name: Transportation  
Contractor Name:  
Contract Start Date:     /     /

Agency Code: DOT01  
Contract Number:

Contract End Date:     /     /

O*Net Employment Category	Number of Employees	Number of hours to be worked	Amount Payable Under the Contract
Total this page	0	0	\$ 0.00
Grand Total			

Name of person who prepared this report:

Title:

Phone #:

Preparer's Signature:

Date Prepared:     /     /

(Use additional pages, if necessary)

Page     of

**FORM B**

**OSC Use Only:**

Reporting Code:  
Category Code:

<b>State Consultant Services</b> <b>Contractor's Annual Employment Report</b> <b>Report Period: April 1,        to March 31,</b>
--

Contracting State Agency Name: Transportation	Agency Code: DOT01
Contract Number:	
Contract Term            to	
Contractor Name:	
Contractor Address:	
Description of Services Being Provided:	

<b>Scope of Contract (Choose one that best fits):</b> Analysis <input type="checkbox"/> Evaluation <input type="checkbox"/> Research <input type="checkbox"/> Training <input type="checkbox"/> Data Processing <input type="checkbox"/> Computer Programming <input type="checkbox"/> Other IT consulting <input type="checkbox"/> Engineering <input type="checkbox"/> Architect Services <input type="checkbox"/> Surveying <input type="checkbox"/> Environmental Services <input type="checkbox"/> Health Services <input type="checkbox"/> Mental Health Services <input type="checkbox"/> Accounting <input type="checkbox"/> Auditing <input type="checkbox"/> Paralegal <input type="checkbox"/> Legal <input type="checkbox"/> Other Consulting <input checked="" type="checkbox"/>			
--	--	--	--

O*NET Employment Category Number and O*NET Job Title	Number of Employees	Number of Hours Worked	Amount Payable Under the Contract
Total this page	0	0	\$ 0.00
Grand Total			

Name of person who prepared this report:	
Preparer's Signature: _____	
Title: _____	Phone #: _____
Date Prepared:    /    /	



**Attachment 6: Non-Collusive Bidding Certification**

**NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY SECTION 139-D OF  
THE FINANCE LAW**

Section 139-D, Statement of Non-Collusion in bids to the State:

**BY SUBMISSION OF THIS BID, BIDDER AND EACH PERSON SIGNING ON BEHALF OF BIDDER CERTIFIES, AND IN THE CASE OF A JOINT BID, EACH PARTY THERETO CERTIFIES AS TO ITS OWN ORGANIZATION, UNDER PENALTY OF PERJURY, THAT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF:**

[1] The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;

[2] Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and

[3] No attempt has been made or will be made by the Bidder to induce any other person, partnership, or corporation to submit or not to submit a bid for the purpose of restricting competition.

**A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE: [1], [2], AND [3] ABOVE HAVE NOT BEEN COMPLIED WITH, PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDERS CANNOT MAKE THE FOREGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE .**

[AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT]

Subscribed to under penalty of perjury under the laws of the State of New York, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ as the act and deed of said corporation of partnership.

**NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY SECTION 139-D OF  
THE FINANCE LAW**

**IF BIDDER(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING:**

<b>NAMES OF PARTNERS OR PRINCIPALS</b>	<b>LEGAL RESIDENCE</b>

---

**IF BIDDER(S) ARE A CORPORATION, COMPLETE THE FOLLOWING:**

<b>NAME</b>	<b>LEGAL RESIDENCE</b>
<b>President:</b>	
<b>Secretary:</b>	
<b>Treasurer:</b>	
<b>President:</b>	
<b>Secretary:</b>	
<b>Treasurer</b>	

**NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY SECTION 139-D OF  
THE FINANCE LAW**

**Identifying Data:**

Potential Contractor: \_\_\_\_\_

Address: \_\_\_\_\_

City, State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_-\_\_\_\_ Email Address: \_\_\_\_\_

If applicable, Responsible Corporate Officer:

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Joint of combined bids by companies or firms must be certified on behalf of each participant

Legal Name of Person, Firm or Corporation

Legal Name of Person, Firm or Corporation

\_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

City, State: \_\_\_\_\_

City, State: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Zip Code: \_\_\_\_\_

## **Attachment 7: Vendor Assurance of No Conflict of Interest or Detrimental Effect**

The Firm offering to provide services pursuant to this RFP, as a contractor, joint venture contractor, subcontractor, or consultant, attests that its performance of the services outlined in this RFP does not and will not create a conflict of interest with nor position the Firm to breach any other contract currently in force with the State of New York.

Furthermore, the Firm attests that it will not act in any manner that is detrimental to any State project on which the Firm is rendering services. Specifically, the Firm attests that:

1. The fulfillment of obligations by the Firm, as proposed in the response, does not violate any existing contracts or agreements between the Firm and the State;
2. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not create any conflicts of interest, or perception thereof, with any current role or responsibility that the Firm has with regard to any existing contracts or agreements between the Firm and the State;
3. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not compromise the Firm's ability to carry out its obligations under any existing contracts between the Firm and the State;
4. The fulfillment of any other contractual obligations that the Firm has with the State will not affect or influence its ability to perform under any contract with the State resulting from this RFP;
5. During negotiations and execution of any contract resulting from this RFP, the Firm will not knowingly take any action or make any decision which creates a potential for conflict of interest or might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
6. In fulfilling obligations under each of its State contracts, including any contract which results from this RFP, the Firm will act in accordance with the terms of each of its State contracts and will not knowingly take any action or make any decision which might cause a detrimental impact to the State as a whole, including, but not limited to, any action or decision to divert resources from one State project to another;
7. No former officer or employee of the State who is not employed by the Firm, nor any former officer or employee of the Firm who is now employed by the State, has played a role with regard to the administration of this contract procurement in a manner that may violate Section 73(8)(a) of the State Ethics Law; and
8. The firm has not and shall not offer to any employee, member or director of the State any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence said employee, member or director, or

could reasonably be expected to influence said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.

Firms responding to this RFP should note that the State recognizes that conflicts may occur in the future because a Firm may have existing or new relationships. The State will review the nature of any such new relationship and reserves the right to terminate the contract for cause if, in its judgement, a real potential conflict of interest cannot be cured.

Firm Name: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

This form must be signed by an authorized executive or legal representative.

**Attachment 8: Executive Order 177 Certification**

This Certification must be completed and returned with the executed contract documents.

**EXECUTIVE ORDER 177**

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodations for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require a reasonable accommodation in employment on the basis of Sabbath observances or religious practices.

Generally, the Human Rights Law applies to:

- All employers of four or more people, employment agencies, labor organizations and apprenticeships training programs in all instances of discrimination or harassment;
- Employers with fewer than four employees in all cases involving sexual harassment; and
- Any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, the Proposal/Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including, but not limited to, the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

Proposer: \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## **Attachment 9: Form M/WBE EEO Minority and Women-Owned Business Enterprises – Equal Employment Opportunity Policy Statement**

Contract No.: \_\_\_\_\_

Contract Title: \_\_\_\_\_

### **M/WBE AND EEO POLICY STATEMENT**

I, \_\_\_\_\_, of \_\_\_\_\_ (Consultant Name) agree to adopt the following policies with respect to the project being developed or services rendered.

#### **MWBE**

This organization will, and will cause its contractors or subcontractors, to take good faith efforts to achieve the M/WBE contract participation goals set by the State for that area in which the State-funded project is located, by taking the following steps:

1. Actively and affirmatively solicit bids for contracts and subcontracts from qualified State-certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
2. Request a list of State-certified M/WBEs from NYSDOT and solicit bids from them directly.
3. Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
4. Where feasible, divide the work into smaller portions to enhance M/WBE participation and encourage the formation of joint ventures and other partnerships among M/WBE contractors.
5. Document and maintain records of bid solicitation, including those to M/WBEs, and the results thereof. The Consultant will also maintain records of actions that subcontractors have taken toward meeting M/WBE contract participation goals.
6. Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and if legally permissible, that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

#### **EEO**

1. This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination and shall make and document its efforts to employ and utilize minority group members and women in its workforce on State contracts.
2. This organization shall state in all solicitations or advertisements for employees in the performance of the State contract, that all qualified applicants will be afforded equal

opportunities without discrimination because of race, creed, color, national origin, sex, disability or marital status.

3. At the request of the contracting agency, this organization shall request that each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
4. The Consultant shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Consultant and subconsultant/subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
5. This organization will include the provisions of sections (1) through (5) of this Contract in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subconsultant/subcontractor as to work in connection with the State Contract.

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Proposer: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_

\_\_\_\_\_ is designated as the Minority Business Enterprise Liaison  
(Printed Name of designated liaison)

**Total Committed M/WBE Contract Participation**

\_\_\_ percent Minority and Women's Business Enterprise Participation

\_\_\_ percent Minority Business Enterprise Participation

\_\_\_ percent Women's Business Enterprise Participation

Signature: \_\_\_\_\_ Title: \_\_\_\_\_

(Authorized Representative Signature)

Date: \_\_\_\_\_



**Attachment 10: DBE Participation Information**

Not Applicable

**Attachment 10a: DBE Subcontractor Participation Solicitation Log**

Not applicable

### Attachment 11: M/WBE/SDVOB Participation Information

Please complete the following table for the prime firm and all subconsultants (consultant team composition). Please identify each firm's legal name, checking if they are certified M/WBE by Empire State Development (ESD) and/or certified SDVOB by the NYS Office of General Services, and indicating each firm's percentage of total cost for the contract. Please keep in mind that only certified M/WBE/SDVOBs are eligible to count towards attainment of this procurement.

Further, participation by a certified M/WBE/SDVOB prime consultant will count towards M/WBE/SDVOB participation and goal attainment.

If the combined percentage of total contract value for all proposed, certified M/WBE/SDVOB is less than the Participation Goal(s) set for this contract, then the proposing prime firm is required to fill out and submit the **Subconsultant Participation Solicitation Log (Attachment 11a)** and a **Goal Attainment Explanation Letter**. Further, the prime consultants certified as a M/WBE/SDVOB who propose to meet the Department's participation goal via their meaningful participation, are required to complete and submit the **Subconsultant Participation Solicitation Log (Attachment 10a)** if their outreach efforts result in proposed M/WBE/SDVOB subconsultant(s).

Contract No.: C038061

Firm Legal Name	NYS ESD Certified MBE/WBE OGS Certified SDVOB				% of Total Contract Value
	MBE	WBE	SDVOB	NONE	
Prime:					
Subconsultants:					
Total					100%

**Attachment 11a: M/WBE/SDVOB Subconsultant Participation Solicitation Log**

Contract No. _____		Participation Goals MBE 5%_ WBE 10 %_ SDVOB 6%_		Page Number __ of __	
Prime Firm Name/Address/Zip Code		Contact Person		Telephone Number (Including Area Code)  Email Address	
Solicited Company Name and Contact Person	Telephone Number (With Area Code)	Federal Employer ID Number (FEIN)	Work Types Being Solicited (enter work types or CUF)	Types and Dates of Contacts	Contact Result(s) Code

\*See Attachment 12: Solicitation Log Instructions

**Attachment 12: Solicitation Log Instructions**  
**(Good Faith Effort Documentation)**

To be deemed responsive to this solicitation, Consultants whose proposed D/M/WBE/SDVOB participation does not meet the established participation goal(s) must document and report their efforts to solicit participation by certified D/M/WBE/SDVOBs in this Non-Architecture/Non-Engineering Contract. The **Subconsultant Participation Solicitation Log** is used for this purpose.

**PLEASE NOTE: For RFPs with a DBE goal, only participation by a NYSUCP certified DBE prime consultants/subconsultants may count towards goal attainment. For RFPs with MBE, WBE and or SDVOB goals, only prime consultants/subconsultants certified by New York State Empire State Development and/or New York Office of General Services SDVOB Program may count towards goal attainment.**

Guidance concerning Good Faith Efforts in meeting D/M/WBE/SDVOB participation goals(s) is located at the end of this section.

The log is to be filled out and submitted in Part II: Cost and Administrative Proposal/Submittal. In order for a Proposal to be determined as representative when the D/M/WBE/SDVOB participation goal is not attained at all or only partially attained, then the Proposer must complete all sections of this form and submit with a **Goal Attainment Explanation Letter**, documenting the firm's Good Faith Effort. A separate Subconsultant Participation Solicitation Log must be submitted for each Participation Goal established in the RFP.

***\*\*DBE CERTIFICATION IS A FEDERAL PROGRAM CERTIFICATION\*\*\* IT IS SEPARATE AND DISTINCT FROM THE NEW YORK STATE MBE & WBE OR SDVOB PROGRAMS. PLEASE DO NOT CONFUSE THE TWO. FIRMS WITH QUESTIONS REGARDING THESE PROGRAMS ARE ENCOURAGED TO SUBMIT WRITTEN QUESTIONS.***

**Contract No.:** Enter the NYSDOT Contract Number (Example C012345)

**Participation Goal:** Enter applicable D/M/WBE/SDVOB participation goal percentage stated in the RFP.

**Page No.:** Enter 1 of 1, 1 of 2, 2 of 2, etc. Use additional forms as needed.

**Prime Name/Address/Zip Code:** Enter the name of the Prime Consultant, its address and zip code.

**Contact Person:** Enter the name of the person your firm has designated as the authorized contact person for this solicitation.

**Contact Person Telephone and Email:** Enter the telephone number (including area code) and email for the person your firm has designated as the authorized contact person for this solicitation.

**DBE/MBE/WBE/SDVOB Consultants Solicited**

**Solicited Company Name and Contact Person:** Enter name of solicited firm and name of the individual associated with the firm to whom the solicitation inquiry was sent.

**Telephone (with Area Code):** Enter the telephone number of the solicited firm.

**Federal Employer ID#:** Enter the Federal Employer Identification Number of the solicited firm.

**Work Type(s) Being Solicited:** Enter the work type(s) or Commercial Useful Function for which the firm has been solicited in connection with the Scope of Services for this contract. NOTE: Work type codes are provided for every certified firm listed in the DBE registry. Commodity type codes are provided for every firm listed in the ESD M/WBE Registry.

**Types and Dates of Contact:** Enter the dates on which your firm contacted the solicited firm, either by mail/email (dates solicitation sent), telephone (including date and time of call), or other person-to-person contacts. Identify the type of contract by prefacing each date with “M” if a mail contact, “E” if email contact, “T” if telephone contact, and “D” if a direct meeting with the firm.

**Contact Rules:** Enter the code(s) which indicates the result(s) of your solicitation.

**\*\*Use additional pages as needed\*\***

**Code Descriptions:**

1. This firm is unavailable to participate in the contract for the reason(s) states on the DBE or M/WBE/SDVOB Solicitation Response. (Attach explanation to the Log)
2. This firm is no longer in business (NOTE: if this action is checked, attach your explanation as to why the solicitation was sent to the firm and how evidence that it was no longer in business was obtained. Attach the returned envelope/email showing that it was undeliverable, for instance).
3. The soliciting Prime Consultant was unable to reach this firm after having a telephone conversation to follow-up on the participation solicitation inquiry. (NOTE: Indicate in the Types and Date of Contact column the dates and types at which follow-up was attempted)
4. This firm did not respond to repeated telephone messages. (NOTE: Indicate in the Types and Dates of Contact column the dates and times at which messages were left)

## Guidance Concerning Good Faith Efforts in Meeting D/M/WBE/SDVB Participation Goals

The following is a list of types of actions that demonstrate good faith efforts in obtaining D/M/WBE/SDVOB participation. This list is not exclusive or exhaustive. The Proposer must show that it took all necessary and reasonable steps to achieve a D/M/WBE/SDVOB goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient D/M/WBE/SDVOB participation, even if they were not fully successful.

- Soliciting through all reasonable and available means (e.g., attendance at pre-bid meetings, utilizing the NYSUCP directory (<https://nysucp.newnycontracts.com>), EDS directory (<https://ny.newnycontracts.com>), or NYS OGS list of certified SDVOBs (<https://online.ogs.ny.gov/sdvob/search>) who have the capability to perform the work of the contract. The Proposer must solicit this interest within sufficient time to allow the D/M/WBE/SDVOBs to respond to the solicitation. The Proposer must determine with certainty if the D/M/WBE/SDVOBs are interested by taking appropriate steps to follow-up initial solicitations.
- Selecting portions of the work to be performed by D/M/WBE/SDVOBs in order to increase the likelihood that the D/M/WBE/SDVOB goal(s) will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facility D/M/WBE/SDVOB participation, even when the Proposer might otherwise prefer to perform these work items with its own forces.
- Negotiating in good faith with interested D/M/WBE/SDVOBs – it is the Proposer’s responsibility to make a portion of the work available to D/M/WBE/SDVOB subconsultants and suppliers and to select those portions of the work or material needs consistent with the available D/M/WBE/SDVOB subconsultants and suppliers, so as to facilitate D/M/WBE/SDVOB participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of D/M/WBE/SDVOBs that were considered, a description of the information provided regarding the plans and specifications for the work selected for subcontracting, and evidence as to why additional agreements could not be reached for D/M/WBE/SDVOBs to perform the work.
- A Proposer using good business judgment should consider a number of factors in negotiating with subconsultants, including D/M/WBE/SDVOB subconsultants, and would take a firm’s price and capabilities. The Consultant’s standing within industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union versus non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Consultant’s efforts to meet the project goals.
- Making efforts to assist interested D/M/WBE/SDVOBs in obtaining bonding, lines of credit, or insurance as required by the recipient or contract.
- Making efforts to assist interested D/M/WBE/SDVOBs in obtaining necessary equipment, supplies, materials or related assistance or services.
- Effectively using the services of available minority/women-community organizations. Minority/women-contractor’s groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of D/M/WBE/SDVOBs.



### **Attachment 13: New York Business Reporting**

New York State businesses have a substantial presence in State contracts and strongly contribute to the economics of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, Bidders/Proposers for this contract for commodities, services, or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subconsultants, suppliers, protégés or other supporting roles.

Bidders/Proposers need to be aware that all authorized users of this contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, Bidders/Proposers are reminded that they must continue to utilize small, minority, and women-owned business, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the consultant and its New York State business partners. New York State businesses will promote the consultant's optimal performance under the contract, thereby fully benefiting the public-sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its consultants. The State therefore expects Bidders/Proposers to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the state and its taxpayers.

Bidders/Proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below and if answered in the affirmative, completing and submitting the following table for all firms (prime consultant and subconsultants) participating in your Proposal. The definition of 'NYS Business' is: 'Any firm with a business address which lies within the borders of New York State from which location the proposed services from this firm shall be provided under this contract. Indicate whether each proposed firm is classified as a NYS business, the total dollar amount attributable to each firm, the total proposed contract cost, and the NYS business address of each firm.



Contract No.: C038061

Will New York State businesses be used in the performance of this contract?

Yes \_\_\_\_ No \_\_\_\_

<b>Firm Legal Name</b>	<b>NYS Business (Y or N)</b>	<b>% of Total Proposed Contract Cost</b>	<b>NYS Business Address</b>
Prime Consultant			
		%	
		%	
Subconsultants:			
		%	
		%	
		%	
		%	
		%	
Total Proposed Contract Cost		\$	

## Attachment 14: Diversity Practices Questionnaire

[If any part Federally Funded, delete the following language and replace with “Not Applicable”]  
I, \_\_\_\_\_ (Name), as \_\_\_\_\_, (Title) of  
\_\_\_\_\_ (Proposer) firm or company (hereafter referred to as  
the company), swear and/or affirm under penalty of perjury that the answers submitted to the  
following questions are complete and accurate to the best of my knowledge.

1. Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? \_\_\_\_ Yes \_\_\_\_ No  
If yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individual(s).
2. What percentage of your company's gross revenues (from your prior fiscal year) was paid to New York State certified minority and/or women-owned business enterprises as subcontractors, suppliers, joint venturers, partners or other similar arrangement for the provision of goods or services to your company's clients or customers? \_\_\_\_\_%
3. What percentage of your company's overhead (i.e., those expenditures that are not directly related to the provision of goods or services to your company's clients or customers) or non-contract-related expenses (from your prior fiscal year) was paid to New York State certified minority and women-owned business enterprises as suppliers/contractors<sup>1</sup>? \_\_\_\_\_%
4. Does your company provide technical training<sup>2</sup> to minority and women-owned business enterprises? \_\_\_\_ Yes \_\_\_\_ No  
If yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of minority and women-owned business enterprises participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs.
5. Is your company participating in a government approved minority and women-owned business enterprise mentor- protégé program? \_\_\_\_ Yes \_\_\_\_ No  
If yes, identify the governmental mentoring program in which your company's participates and provide evidence demonstrating the extent of your company's commitment to the governmental mentoring program.
6. Does your company include specific quantitative goals for the utilization of minority and women-owned business enterprises in its non-government procurements? \_\_\_\_ Yes \_\_\_\_ No  
If yes, provide a description of such non-governmental procurements (including time period, goal, scope and dollar amount) and indicate the percentage of goals that were attained.

<sup>1</sup>Do not include onsite project overhead.

<sup>2</sup>Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job specific as opposed to soft skills which are transferable.

7. Does your company have a formal minority and women-owned business enterprise supplier diversity program? \_\_\_Yes \_\_\_No  
If yes, provide documentation of program activities and a copy of policy or program materials.
8. Does your company plan to enter into partnering or subcontracting agreements with New York State certified minority and women-owned business enterprises if selected as the successful respondent? \_\_\_Yes \_\_\_No

All information provided in conjunction with the questionnaire is subject to audit and any fraudulent statements are subject to criminal prosecution and debarment.

Signature of Owner/Official	
Printed Name of Signatory	
Title	
Name of Business	
Address	
City, State Zip Code	

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_ ) ss:

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name if subscribed to this certification and said person executed this instrument.

\_\_\_\_\_  
Notary Public

## Attachment 15: Key Personnel References

### Instructions:

- Complete one Attachment 15 for each Key Personnel title identified in the RFP.
- Attachment 15 shall not exceed six (6) pages for each Key Personnel.
- Proposer's may expand the boxes as necessary.
- The term "Client" below refers to the past project owner. "Client" is NOT a Prime Contractor where the proposing firm acted in the capacity as a Subcontractor.

1. Personnel Name and Title	
2. Title Assigned for this Project	
3. Firm working for on this Project	
4. Current Employment Status	<input type="checkbox"/> Employed by Firm identified in #3 above <input type="checkbox"/> Employed by a different Firm <input type="checkbox"/> Unemployed
5. Years of Relevant Experience	
6. Description of Relevant Experience	
7. Certification/Licenses	
8. Education	
9. Past Project Experience	Complete below for a maximum of 5 past projects
9.1 Project Description #1 (include contract number where appropriate)	
9.2 Client Name	
9.3 Client Contact Information (including contact name, phone number, and email address)	
9.4 Description of person's role and responsibilities during project	
10.1 Project Description #2 (include contract number where appropriate)	
10.2 Client Name	
10.3 Client Contact Information (include contact name, phone number, and email address)	
10.4 Description of person's role and responsibilities during project	
11.1 Project Description #3 (Include contract number where appropriate)	
11.2 Client Name	
11.3 Client Contact Information (include contact name, phone number, and email address)	
11.4 Description of person's role and	

responsibilities during project	
12.1 Project Description #4 (include contract number if appropriate)	
12.2 Client Name	
12.3 Client Contact Information (include contact name, phone number, and email address)	
12.4 Description of person's role and responsibilities during project.	
13.1 Project Description #5 (include contract number if appropriate)	
13.2 Client Name	
13.3 Client Contact Information (include contact name, phone number, and email address)	
13.4 Description of person's roles and responsibilities during project	

## **Attachment 16: Contract Job Title Descriptions & Qualifications**

**Project Manager** – The Project Manager is responsible for all aspects of understanding, managing and delivering the Project and Contract Objectives in Section 3 and Scope of Services in Section 4 and Attachment 17. The Project Manager will be the first point of contact for any discrepancies arising from contract or work activities. The Project Manager must have a minimum of a bachelor's degree and 5 years of experience in a work-related field.

**Account Manager** – The Account Manager is responsible for managing all account, invoice, and payment activities. The Account Manager will also be responsible for any contractual matters. The Account Manager must have a minimum of a high school diploma and previous work-related experience.

**IT Manager** – The IT Manager is responsible to ensure the web-based management and information program is efficient, intuitive, and easy to use. The IT Manager will handle system errors in order to ensure a high level of performance. The IT Manager must have a minimum of a bachelor's degree and 5 years of experience in a work-related field.

Note: The Project Manager, Account Manager and IT Manager may be the same person.

## **Attachment 17: Scope of Services Detailed Task Descriptions**

### **Task 1 – Development, Implementation, and Execution of the JOC System Structure**

The Consultant will be responsible to NYSDOT for the comprehensive and actual development, implementation and execution of the JOC System.

The JOC System will provide the means to contract for indefinite quantities and undefined locations containing all potentially necessary maintenance and repair tasks and items that can be competitively bid. The Consultant will be responsible for researching, establishing, inputting, and updating fair-market pricing in the Unit Price Book in accordance with NYSDOT practices, NYSDOT Standard Specifications and Standard Sheets, and the policies and procedures of the NYSDOT Office of Transportation Maintenance (OTM). See: <https://www.dot.ny.gov/main/business-center/engineering/specifications>

**For any tasks in the Unit Price Book not covered by the Department's Standard Specifications/Sheets, the Consultant shall develop supplemental performance specifications for those tasks while adhering to the NYSDOT Standard Specifications/Sheets and NYSDOT OTM Practices. The supplemental Technical Specifications must be able to be printed and stored on a NYSDOT-compatible PC and operate in Microsoft Windows operating system.**

The Consultant shall provide NYSDOT with complete technical support throughout the development, implementation, execution and evaluation of the JOC maintenance contracts (during normal business days and hours only – New York time). Expectations will include assisting NYSDOT in establishing procedures, troubleshooting, implementation and continuous system monitoring. Complete technical support shall also be provided during the procurement phase and throughout the life of the contract.

The Consultant will assist NYSDOT staff in the actual execution of the contracts by helping NYSDOT staff develop Job Orders. Consultant staff will attend and monitor initial site visits, proposal development and negotiation sessions.

### **Task 2 – Development, Installation and Testing the JOC System and a Web-based Management and Information System on both NYSDOT and Contractor Systems**

The Consultant shall provide NYSDOT and its Contractors with a comprehensive JOC system web-based management information program ("Program").

The Program must be able to: provide full project tracking automated development of contractor cost proposals and independent Department estimates; generate all project documentation; provide project scheduling capability along with budget and cost control information; and generate customizable reports. The system shall be able to provide a fully auditable record of items, quantities, and prices for management. The system must also be capable of transferring data files into Microsoft Access and be operable in a Microsoft Office environment. The Program must be able to provide MS Word/Excel-formatted data on element level, job order

level, and contact level for program management usage. The data must be in a format that can be queried, filtered, and sorted to facilitate ad-hoc reporting by NYSDOT managers.

The Consultant will be responsible for installing and testing the Program on both NYSDOT and Consultant hardware systems and cannot be fully implemented until accepted by NYSDOT.

**PLEASE NOTE:** NYSDOT will not allow restrictions on the number of client use or installation.

### **Task 3 – Development of JOC System Documents**

The Consultant will be responsible for the development of JOC documents including, but not limited to: the Unit Price Book, technical specifications, and printable bid documents. The Consultant shall adhere to current NYSDOT contracts' terms and conditions to form the basis for new Job Order Contracts.

The following is a summary table which presents a representative sample of Job Order Contracts, from a sampling of NYSDOT Regions, which can be found online at: <https://www.dot.ny.gov/doing-business/opportunities/const-notice>

<b>Contract Number</b>	<b>Region</b>	<b>JOC Work Type</b>
D264158	6	High/Culvert
D264006	7	Highway Maintenance
D264428	8	Culvert
D264469	9	Bridge (Chenango, Otsego, Schoharie)

#### **Task 3.1 – Unit Price Book (UPB)**

The Consultant shall develop Unit Price Books by NYSDOT region and/or by county; by category (work type of highway, culvert, bridge, overhead sign structures, combined) covering all maintenance and maintenance related activities as established in previous NYSDOT JOC contracts and as determined by NYSDOT staff. (Refer to section 1.2.1.1 for more information describing the Unit Price Book). The Consultant shall organize and direct a series of meetings with appropriate NYSDOT staff to determine the maintenance activities that will be contained in the Unit Price Book.

Each unit price shall be developed using local, current labor, equipment, and material rates specific to each county in New York State. The direct labor cost will be developed using local prevailing wage rate tables. The direct material and equipment costs will be determined by conducting a pricing survey of the local market. The use of factors localizing prices will not be acceptable.

The Unit Price Books generally contains no fewer than 60,000 individual construction tasks, the Unit Price Book shall be modified for required, specific labor, equipment and materials costs for each county in New York State. The Unit Price Book shall be customized to meet the needs of NYSDOT through the addition, deletion and modification of individual items. The Technical



Specifications shall be similarly customized through the addition, deletion and modification of individual specifications.

The Unit Price Books must be able to be printed and stored electronically on a NYSDOT-compatible PC and operate in Microsoft Windows operating system.

The resultant Unit Price Book will be used for bidding purposes by prospective construction contractors interested in performing these activities. Bidders will have to accept the prices in the Unit Price Book, but will be allowed to submit two adjustment factors, one for the cost to perform the activities during normal business hours and the other for non-normal business hours. This will represent the contractors' only adjustment to the prices published in the Unit Price Book. Indirect costs such as overhead, profit, bonds, insurance, design and contingency costs are to be included in each contractor's adjustment factors.

### **Task 3.2 – Technical Specifications**

The Consultant shall use NYSDOT's Standard Specifications for each of the maintenance and repair activities listed in the Unit Price Book, unless a technical specification is required for an activity not covered by NYSDOT's Standard Specifications. If an activity is not covered by NYSDOT's Standard Specifications, the Consultant must write the technical specification for that activity and obtain NYSDOT's approval. The technical specifications are to be compiled, published and stored electronically using NYSDOT's current MS Word Standards. The Consultant shall organize and direct a series of meetings with appropriate NYSDOT staff to evaluate existing NYSDOT Standard Specifications and Maintenance Procedures.

### **Task 3.3 – Printable Bid Documents**

The Consultant must develop bidding documents, including, but not limited to: the full set of customized and printable JOC documentation, NYSDOT specific Unit Price Books, any supplemental Technical Specifications, and Job Order contractual terms and conditions. All documents will be for NYSDOT's full use.

NYSDOT will prepare contracts that will be for the specific work types of highway, culvert, bridge, overhead sign structure, or combined. Prices for that work will be based on the JOC System Consultant's Unit Price Books, and will be bid on by various maintenance and repair contractors for the resultant NYSDOT "D" contract using two allowable adjustment factors at a level the maintenance and repair contractors offer as part of their bid.

### **Task 4 – Provide Comprehensive JOC System Support and Maintenance**

The Consultant will be responsible for providing comprehensive JOC system support and maintenance to NYSDOT. The Consultant will also monitor the overall program and prepare any status reports required by NYSDOT.

The Consultant shall provide continuous systems support to NYSDOT throughout the duration of the Contract and will assist NYSDOT's Regional Design, Construction, and Maintenance staff, as well as the NYSDOT OTM throughout the administration and management of the JOC system. This assistance will include upgrades, debugging, telephonic assistance and other

related support; maintenance and preparation of Unit Price Books and any supplemental technical specifications for each maintenance activity; maintenance and vigorous support of the JOC system web-based management program; software and access systems; and in-depth training of NYSDOT and contractor personnel as needed and in an amount, type, frequency, and location within the State of New York as determined in NYSDOT's sole discretion. The Consultant will also continually provide vigorous maintenance and support of the JOC system to NYSDOT's JOC contractors.

#### **Task 5 – Provide Training to NYSDOT and Contractor Staff**

The Consultant will be responsible for developing a comprehensive JOC training program which will include different course modules in order for all levels of designated NYSDOT staff and contractors to receive specialized training. Training is to be “hands-on” and include a comprehensive training/reference manual with sample Job Orders, flowcharts, and forms to be used by trainees as a reference tool after completion of the training. Should there be a change in the JOC System and/or Program, the Consultant shall conduct training of those changes for all NYSDOT and JOC contract users.

#### **Task 6 – Contract Transition**

To ensure a seamless transition between the Consultant and a future designated Consultant, NYSDOT will establish a transition period during which the Consultant will work with the future designated Consultant to provide the necessary coordination and services without interruption during the transition.

The Consultant shall construct a 90-day Transition Plan, ready to execute prior to completion of the contract period (or extension(s), if any). The Plan shall ensure a transfer of the JOC System without interruption of service if the Consultant is not designated for award of a replacement contract. The Plan shall be submitted to the NYSDOT Project Manager for approval.

At the discretion of the NYSDOT Project Manager, the Consultant will participate in meetings with partner agencies and the future designated consultant to address any concerns prior to transition.

The Plan shall identify the operational requirements during the transition and provide technical support for any systems malfunctions. It shall detail a schedule of staffing necessary to transition the program and include an interim status report. The Plan shall include the process to transfer all physical and intellectual assets. The Consultant shall return to the NYSDOT Project Manager all NYSDOT property including any data. At the end of the Contract, the Consultant shall remove such data from any electronic equipment owned by the Consultant.

## Attachment 18: Cost Proposal Workbook

FIRM NAME: \_\_\_\_\_

CONTRACT NUMBER: C038061

CONTRACT NAME: JOB ORDER SYSTEM (JOC) SERVICES FOR NYSDOT

### PROPOSED FIXED FEE PERCENTAGE:

	Estimated Annual JOC Contract Value	JOC Fee Rate (%) for first \$10 Million	Fee (\$10M x fixed percentage fee)	JOC Fee Rate (%) for Balance	Fee (\$20M est. x fixed percentage fee)	Projected Total Annual JOC Fee
Year 1 – 11/1/22- 10/31/23	\$15,000,000					
Year 2 – 11/1/23- 10/31/24	\$15,000,000					
Year 3 – 11/1/24- 10/31/25	\$20,000,000					
Year 4 – 11/1/25- 10/31/26	\$20,000,000					
Year 5 – 11/1/26- 10/31/27	\$20,000,000					
TOTALS	\$100,000,000					

### NOTES:

1. Firms are instructed to present a fixed percentage usage fee for the first \$10M in JOC Contracts and a fixed percentage usage fee for the balance of JOC Contracts for the balance of the estimated \$5M in their cost proposal based on all of the information contained in NYSDOT JOC System RFP for Contract #C038061.

2. Consultant reimbursement under Contract #C038061 shall be the proposed fixed fee percentage multiplied by the dollar value of each resulting JOC contract.
3. The estimated total cost to the State for the five years of the project based on the fee(s) shall be based on an assumed total JOC contracting amount of \$100M over five years.
4. The proposed fixed percentage usage fee will remain unchanged throughout the contract period.
5. The fixed fee must be offered as a percentage of the maintenance and repair Job Orders contracted out by NYSDOT via the JOC System value (for example: 1.21% of the maintenance and repair Job Orders contracted out).
6. The fixed fee must cover all consultant costs for full provision of all JOC System services to NYSDOT over the entire contract's term.
7. NYSDOT will not reimburse the selected Consultant for any other expenses during the life of the contract.
8. The total anticipated maintenance and repair Job Orders contracted out is estimated to reach \$100M over the period of the contract. This anticipated total value is based on historic annual usage with an estimated increase usage.
9. There is no minimum guaranteed number of JOC contract work that will be made during any given year, nor is there a maximum amount of JOC contract work for any given year or for the total contract term.

## **Attachment 19: RFP Modifications**

Attachment 19, which contains the RFP's Modifications can be found on the NYSDOT project web site, located at <https://www.dot.ny.gov/business> . Click on "Consulting Services", then click on "Opportunities", and then click on the **date** to the left of "*Job Order Contracting (JOC) System Services for NYSDOT.*"